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A

VINDICATION

OF THE

RIGHTS

OF THE

Commons of England.

By a MEMBER of the Honourable the  
House of COMMONS.

*Quod omnes tangit, ab omnibus tractari debet.*

*Amicus Plato, Amicus Socrates, sed Magis Amica Veritas,  
& Patria.*

L O N D O N :

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T O T H E  
King, Lords *and* Commons,  
In this Present  
P A R L I A M E N T.

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*To the KING.*

G R E A T S I R,

**Y**OUR Majesty's Loyal Subjects have Reason to be highly Sensible of the Glory and Happiness this Nation Enjoys in Two very Extraordinary Particulars ; that is, **The Excellency of their King, and the Excellency of their Government.**

*The First hath been fully Demonstrated, by Your Majesty's Great and Glorious Actions, to all the World ; The Latter seems rather to be Understood by its Happy Effects than its Happy Institution ; and therefore a Plain and Brief Explanation thereof, is Humbly set forth under Your Majesty's Gracious Patronage, in hopes that the Universal Love, which the People of England have gratefully Entertain'd for Your Majesty's Royal Person, may also be Extended to the Establish'd Government.*

## The EPISTLE Dedicatory.

*It may be Observ'd, that in most former Reigns there have been Two sorts of Men within the Kingdom, who have been commonly known and distinguish'd by the Name of, The Court and the Country Party ; but when their Professions have been compared with their Actions, the real difference betwixt them hath ever appeared to be no more than this, That One Party were very Zealous for the King and Themselves, and the Other for their King and their Country.*

*But since, by the Experience of all Ages, it is apparent, the first Proposition in this little Treatise is certainly true, That in all Monarchical Governments, it is Absolutely Necessary, for the Common Good, to Preserve a Right Understanding between the King and the People, and that no King was ever Great and Glorious in England, but He, that like Your Majesty, became the Prince of his People ; nor no People ever Happy but They, who, like Your Majesty's Subjects, perform'd a Cheerful Obedience to their Prince, I Humbly Conceive, that I cannot Attempt to do a better Thing for England, than to Endeavour to Continue and Establish to all Posterity the like happy Union in this Kingdom ; and I don't know any better way to Accomplish that Great End, than by Demonstrating to all sorts of Capacities, That the Happiness and Prosperity of both Prince and People, doth Entirely depend upon Preserving the Happy Constitution of the Establish'd Government.*

MOST GRACIOUS SOVERAIGN,

*As the Subject of this Treatise, so the Author also doth, with all Humility, depend upon Your Majesty's Royal Protection, that his Sincere Endeavours, for the Publick Good,*  
may

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The EPISTLE Dedicatory.

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*may not Suffer for any Involuntary Mistake on one side, or for want of Charity, or Love of Kingly Government, on the other ; and that he may have the Honour to Profess himself amongst the Number of those who are Entirely Devoted to the True Interest of their King and their Country, is the Highest Ambition of,*

May it Please Your MAJESTY,

Your Majesty's Most Obedient,

Most Humble,

and Most Dutiful

Subject and Servant,

*Humphrey Mackworth.*



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To the Right Honourable  
*The LORDS Spiritual and Temporal,*  
In this Present  
P A R L I A M E N T.

My LORDS,

**T**HE Excellency of the Government of *England*, by *King, Lords and Commons*, is a Subject worthy of the greatest Consideration : and though, as a Member of the *House of Commons*, I have Entitled this little Treatise, *A Vindication of the Rights of the Commons of England*, yet I humbly hope I have not been wanting, upon all Occasions, to Assert and Maintain the Just Rights and Judicature of Your Lordships, or else I must confess I have ignorantly varied from my Intentions, and fail'd in that Great Rule that I have laid down as Necessary for the Common Safety ; which is, *To Preserve the Just Ballance of the Constitution.*

My Good Intentions therefore, for the General Good, will, I hope, Plead my Pardon with Your Lordships, for any Error or Mistake in Judgment, since I have not wilfully Transgressed the Bounds of Law or Reason, nor Asserted any Proposition but what I Sincerely apprehend to be as Necessary for the Support of the Rights of Your Lordships, as of that Honourable House where I am Entrusted to Sit as a Member, and where I hope I shall always Discharge my Duty with great Respect to Your Lordships, as well as with Loyalty to my King, and Fidelity to my Country.

And under this Character, together with an humble Assurance of my readiness to change my Opinion, and acknowledge any Error, whenever I shall hear good Reasons for it, as aiming at nothing but the *Publick Good*, and a Happy Union in this Kingdom, I humbly crave Leave (with all due Regard and Deference to your Lordships) to Subscribe,

My LORDS,

*Your Lordships most Obedient*

*and most Humble Servant,*

*Humphrey Mackworth.*

To the Honourable ROBERT HARLEY Esq;  
Speaker, and all the Honourable the Knights,  
Citizens and Burgessees, in this present Parliament.

Honoured S I R 'S,

**T**His little Treatise, in Vindication of the Rights of the Commons of England, comes Naturally to Crave Your Favour and Protection, as the Constant and Generous Patriots of Your Country, and the Representatives of those very People, whose Rights are here (in all humble manner) Asserted and Maintain'd.

And the Writer thereof doth Entirely depend on Your Usual Candour, and Favourable Construcion of his Proceedings, not doubting but his good Intentions, to Serve the Publick, will make an Apology for his want of Performance.

And yet there is nothing Affects him more upon this Occasion, than a Just Apprehension and Concern for his Country, least this Noble Subject should any ways Suffer under his Management; especially since he Labours (at present) under want of Time, as well as Capacity, to Treat of it in such a Manner as becomes the Weight and Dignity thereof.

But since something of this Nature seems Necessary to be done at present, in Order to Create a Right Understanding of these Weighty Matters, and to Preserve that Happy Union in England that is Absolutely Necessary for the Common Good of the King and Kingdom, he humbly Hopes that this Poor Acknowledgment of his Duty may be favourably Accepted, till a better be Performed.

And in the mean time, as he must confess that he hath a great Veneration for every Part of the Constitution of the Government of England, so (amongst the rest) for that Honourable Assembly the House of Commons, which has been Establish'd by the Wisdom of our Ancestors, as the great Bulwark of the Rights and Liberties of the People of England; to the Preservation of whose Rights, He can never doubt but every True English-man will give his Helping Hand, and Indeaour to Promote a Right Understanding thereof, with the like Dis-interested Zeal as is here Attempted by,

GENTLEMEN,

Your most Obedient

Humble Servant,

*Humphrey Mackworth.*

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# PREFACE.

**W**Hen a Misunderstanding unfortunately happens between any two Persons or Bodies of Men, who aim at the same Common End, *The Publick Good* ; and whose Interest it is to be United, and Agree together, as the only Means to obtain that End, or even to preserve themselves ; 'Tis plain, that it can be only a mistake, or misapprehension, on one side or other, and *that he that by any means can Convince either, will certainly oblige and please both.*

My hopes therefore are, That what is here humbly Offered to Consideration, may, in some measure, contribute to such a mutual Satisfaction.

For as there is nothing can Ruine *England* but Unhappy Divisions, so there is nothing in the present Circumstances can Save it but a Happy Union.

*Divide & Impera*, To Govern by Parties and Factions, may be a Maxim for Arbitrary Governments, but not in a Regulated *Monarchy* ; In *England* the direct contrary hath ever been observed, That when all Parties, especially all the Branches of the Legislative Authority, have been United and *Inseparable*, the Nation hath ever been found *Insurperable*, and not to be Subdued.

It is certain, that no Person can Act more for the Interest of the *French* King, in this Conjunction of Affairs, than by creating Animosities and Differences in *England* : And no Person can act more against the *French* Interest, than by creating a happy Agreement.

Since then we all seem to contend, who shall appear to be most Loyal to the King, and most Zealous against *France*, I hope we shall all demonstrate our Sincerity by our Actions, by doing those things that are most likely to Please His Majesty, and to Humble *France* ; and that is, in His Majesty's Gracious Expressions, *By being firmly United*  
amongst



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*amongst Our Selves, since nothing can contribute more to Our Safety at Home, or to Our being Considerable Abroad.*

Let us therefore lay aside all private Interests, where the Publick is Concerned : Let us not so much consider who are the Chief Ministers of State, *whether New or Old*, as whether they do Faithfully Discharge their Trusts, and Execute the Duty of their respective Places, for the General Good of the *King and People*.

A Councillor of State, or Officer of Justice, is not to be Reverenced and Esteemed, because he is true to the Interest of this or that Party, but because he is *Just and Honest to all Parties, and True to the Interest of the King and Kingdom*.

But this I may be bold to say, and it appears by the constant Experience of all Ages, That he who is False and Ungrateful to his *Creator*, can never be Sincere, *either to his King or to his Country*.

He that hath not Understanding to discern an Almighty Power, by all the wonderful Works of the Creation ; or he that hath, and yet lives in open Defiance to the same, and in a wilful Habit of Sin and Debauchery ; He that denies a dependance on a Divine Providence, and he that owns it with infinite Obligations, and yet discovers by his *Actions*, that he forgets them all, are equally Unworthy to be Trusted with the *Honour* of the *King*, or the *Safety* of the *People*.

Many Men (says a famous Author) have good Sentiments in the moment you oblige them, but the Constitution of their Nature sways them soon after, and they easily forget what they owe others, because they only love themselves : *And as Fire converts all things into its own Substance, they only consider Publick Interests to convert them to their own Advantage, and equally despise those who do them Good, and the State in which they receive it.*

This is most certain, That the same Qualifications which render Men worthy of Favours, are the same which make them capable and desirous to Acknowledge them : And on the contrary, The same ill Qualities which make Men unworthy of Favours, are the same which make them ungrateful both to their *King* and their *Country*.

And the Qualifications of any Minister will always be suspected, who shall at any time Endeavour to *lay his own Faults on the Sacred Person of his Prince, and to shelter himself from Justice by a fatal Division in his Country*.

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But let the Faults of Ministers be what they will, they cannot be greater to an Earthly Power, than the Crimes of all other Men are in the sight of Heaven; and therefore it must be the Duty of every Man to forgive others, as he would be forgiven himself: That is, upon the same Condition of *Repentance and Amendment*.

But if a great Minister shall at any time Offend, and persist in his Error; if he shall Break in upon the Constitution of the Government, and at the same time Justify it to be Lawful, and so Endeavour to Establish a Precedent which tends to the Ruine and Destruction of his Native Country to all Posterity, How can any Man pretend to say, that during such Impenitency, he is Entitled to *Forgiveness either from God or Man?*

The End then of Publishing these Occasional Thoughts, on the *Rights of the Commons*, is, First, To demonstrate the Nature of the Constitution of the Government of *England*, by *King, Lords and Commons*, and thereby to Encourage all True *Englishmen*, of what Degrees and Capacities soever, to put a Just value upon it, and to be as tender of its Preservation as of the Apple of their Eyes, as the Nature and Excellency thereof doth require, and as that upon which depends the Honour and Safety of the *King*, and the Preservation of the Rights and Liberties of all the *People of England*.

In the next place, 'tis design'd (with due Respect and Deference to the Great Officers and Ministers of State, who shall at any time be concerned in the Administration of Publick Affairs) as an humble and kind Admonition to them, not to Offend against this happy Constitution; or if they do, (as the Best of Men may Err) that they study rather to Excuse, than Justify their Mistakes, and find out any other way to save themselves, and palliate their Errors, (which may happen from the surprize of Extraordinary Honours and Preferments) than by *procuring an Impunity at the Price, and with the Ruine of their Native Country*.

And in the third place, 'tis propos'd with all Humility and Deference to better Judgments, to Demonstrate the Nature of the Powers and Proceedings, of *Lords and Commons* upon Impeachments, and how they do mutually Support and Depend on each other for their Common Safety, and thereby to promote a Right Understanding thereof, and continue a happy Union between Both Houses.

And in order to this it has been consider'd, That the great End of Speaking and Writing, is to make other Men understand what is

Spoke



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Spoke or Writ, and thereby to Convince them of that Truth which is to be demonstrated.

Many Things are plain when they are plainly expressed, which till then do often remain as Mysteries.

When therefore the Intent of a Writer is to do Good to others, and not to gain Preferment or Applause to himself, he will rather study how to *Convince* than *Pleaze*; and how to make that Truth, which seems evident to himself, appear so to others, than to Entertain his Reader with useles and amusing Oratory.

But he must, at the same time, confess, That he thinks himself very fortunate in this particular, that he is at present to treat of *such a Constitution of Government*, which needs no other Advantage to set it off, than a bare Relation of its own Worth and Excellency; and consequently, is more agreeable to the mean Capacity of the Writer.

If any thing therefore, in these Papers, shall in the least contribute to a Right Understanding of the Subject Matter, and consequently to a good Agreement between all Parties, the Intent thereof is fully Answered.

And if the Writer is unfortunately Mistaken in any particular, (as a Person of his weak Understanding very well may) he shall be obliged, for the discovery of his Error, to any Person that shall treat him as a Gentleman, and as soon as he has an Opportunity to Consider thereof, he will as fairly Acknowledge the same, or give his Reasons to the contrary.

But since his End is Serious and Sincere, for the Publick Good, he cannot shew a Respect to any other Answer, than that which aims at the same Advantage to the Publick as is hereby Intended; which is, To Convince all Parties of the real Truth, and thereby to promote a happy Union in this Nation.

The Writer indeed, cannot but be Sensible, that if there shall happen at any time hereafter to be a *Sett of Evil Ministers* in this Kingdom, they will be apt to be very much Offended at this well-intended Treatise; and for that reason it might have been esteemed a Politick Part to have conceal'd his Name; but this he did not think for the Honour of that House of which he is a Member, least their Enemies should perpe it as a Spurious Pamphlet, and as if the Writer had not a good



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good Cause to Defend, or wanted Courage to own it ; and therefore this is his true and real Satisfaction, *That he shall either in some measure contribute to the Preservation of the Happy Constitution of the Government, and thereby promote his own and his Countries Welfare together, and prevent the Unhappiness of an Evil Ministry to this Nation ; or else have the Honour to Suffer in such a Glorious Cause, In Defence of the Rights of the Commons of England.*

But if this Treatise fall into the hands of Persons Zealous and Affectionate for the True Interest of their Native Country, it may perhaps be of some Use to Promote a Right Understanding between all Parties, and to Continue a Happy Union between the *King, Lords and Commons*, which is Absolutely Necessary for the Happiness and Safety of *England*, and for the Attaining those Great Ends which all Good Men do Heartily Wish and Desire : And that is, *To Secure our Trade, and Promote our Manufactures : To Pay our Debts, and Assist our Allies : To Employ our Poor, and Preserve our Religion : And, in short, To Put a Timely Stop to the Exorbitant Power of France, and to Advance the General Good of the King and Kingdom.*

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A  
VINDICATION  
OF THE  
RIGHTS  
OF THE  
Commons of England.

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CHAP. I.

*Of the Nature and Excellency of the Government of England,  
by King, Lords, and Commons.*

**T**HE Happy Constitution of this Government (which is the Glory and Happiness of England, and the Wonder or Envy of all the World) is founded on these following Maxims and Prudent Considerations :

That in all Monarchical Governments it is absolutely Necessary, for the Common Good, to Preserve a Right Understanding between the King and the People.

That therefore it is Necessary, in all such Governments, that whatever Mismanagements happen, No Blame or Wrong be Imputed to the King.

That as it is Necessary to take Care that no Blame be imputed to the King ; so it is also Necessary to take as much Care as possible, That no Wrong be done to the People.

That therefore when any Wrong is done, the People may have a Legal Remedy for Redress thereof.

That the King and the People are like the *Head* and the *Body*, and do mutually depend on each other.

That as the People depend on the *Protection, Justice* and *Conduct* of the Prince, so the Prince depends on the *Subjection, Strength* and *Treasure* of the People.

That therefore it is the *Interest* of all *Kings* and *Princes*, to Govern in such a manner as is *Consistent* with *Reason*, and with the *Rights* and *Liberties* of the People.

That in Order thereunto, and to prevent Mistakes, it is very *Requisite* and *Convenient*, that (as far as may be) the *Prerogatives* of the King, and the *Rights* of the People, be *Declared* and *Ascertained*.

That therefore a *Regulated* or *Limited Monarchy*, according to such *Declarations* or *Laws*, founded upon *Reason* and *Justice*, is the most *Happy, Secure*, and *Best* sort of Government, both for the *King* and the *People*.

That in all such Monarchies it is *Absolutely Necessary*, for the *Common Safety*, that the *Prerogatives* of the King, and the *Rights* of the People, be *Secured* to each other by a *Prudent Distribution* of *Power*, in the *Original* Frame and *Constitution* of the Government.

That therefore the *Absolute, Supreme*, and *Legislative Authority*, (which is necessary to Support all Governments against Contingencies) be Lodged (not in *One*) but in *Three* distinct Persons or Bodies, United by Interest in the same Common End, *The Publick Good*.

That these *Three* Branches of the Supreme Authority, have also several *particular Powers* lodged in them, as *Mutual Securities*, for the *Common Safety*, to *Assist* each against the *Encroachments* of the other, which may not be Legally defeated or made Impracticable.

That the said *Absolute, Supreme*, and *Legislative Authority* in *England*, be Lodg'd in the *King*, the *Lords* and the *Commons*: With the *King* as Supreme, and Common Father of his Country: With the *Lords* as Persons of great Honour, Quality and Estates, and consequently highly concerned for the Publick Safety. With the *Commons* as they are the Representatives of the People; and with all *Three* together, as United by Interest in the same Common End, *The Publick Good*.

That the *King, Lords* and *Commons*, have also several *particular Powers* and Authorities Lodged in them, as *Mutual Securities* for the Common Safety: That is to say, That the *King* have the Power of making War and Peace, of Commanding the Militia and Forces of the Kingdom, of Calling and Dissolving Parliaments, of Appointing all Officers Ecclesiastical, Civil and Military; and, in short, all other Powers and Prerogatives that a *Wise and Good Prince* can desire, to make him *Happy and Beloved* at Home, as well as *Potent* and *Respected* Abroad.

That



That the *Commons*, as Representatives of the People, have (amongst other things) the Power of Levying Money, and of *Impeaching and prosecuting Evil Ministers*, as a necessary Security to preserve the Rights and Liberties of the People.

And that the *Lords* be Entrusted with a *Right of Judicature*, and as another Branch of the Legislative Authority, to preserve a *Ballance of Power* between the King and the People.

That as the *King, Lords and Commons*, united together, have an *Absolute Supreme Power*, to do whatever they shall think necessary or convenient for the Publick Good, of which they are the only Judges, there being no Legal Power on Earth to Controul them; so the several and particular Powers Lodged in them as Branches of the Supreme Authority, as Mutual Securities for the Common Safety, and as Checks one upon another, must in their Nature be *Supreme and Absolute* against all but one another.

That the *Lords and Commons* therefore have Power over the Courts of *Westminster-Hall*, but the Courts of *Westminster-Hall* have no Power over the House of *Lords or Commons*.

The *Lords* have a Power upon a Writ of Error, to Reverse the Judgments of the Courts of *Westminster-Hall*; and the *Commons* have a *standing Committee* for Courts of Justice, to Inspect into the Abuses in those Courts, either by *Corruption* in the Judges, or *Extortion* in the Officers; but the Judges of those *Inferior Courts* have no Power to judge of the Legality of Proceedings in the High Court of Parliament; for that would be to *Invert* the Order of Justice, and *Subvert* the Constitution established for the common Safety.

The *King, Lords and Commons* therefore, as *Supreme*, have Superior Powers, and the Liberty of Exercising them (according to the Nature and Constitution thereof) as they in their Respective Wisdoms and Discretions shall think most conducing to the Publick Good, without rendring any Account for the same; that is, the *King*, by Advice of his Council, (*viz.* the Privy Council in Matters of State, and the Judges in Matters of Law) and according to the Noble Constitution of the Monarchy hereafter set forth; may Exercise the High and Great Prerogatives of Making War and Peace, Calling and Dissolving Parliaments, &c. and no Mismanagement is to be imputed to the *King*, but to his *Ministers*.

The *House of Lords* being a Great Council within themselves, are Entrusted with the Exercise of the Power of Judicature on Impeachments, upon Honour; They are not bound up by an Oath, nor restrained by a Jury; but they supply the Place of Judge and Jury, and determine according to Right and Justice, and according to their Lordships great Judgments and Discretions, from which there lyes no Appeal.

And the *House of Commons*, being a Numerous Body, the Representatives of the People, and another Great Council within themselves, have the Power of *Impeaching and Prosecuting Evil Ministers, and other Great Offenders*, as they in their Discretions shall judge requisite for the Publick Safety; and are not accountable for the same to any Superior Power.

And

And 'tis absolutely necessary for the *Safety of England*, That such *large Powers* should be lodg'd *somewhere*, to preserve the *King and People* from the *Secret Designs of Contriving and Ambitious Men*, who will be endeavouring in every Age, to *Overturn the Happy Constitution of the Government*, and to accomplish their *Wicked Ends* by such *dark and hidden Measures*, which though manifest and Apparent by their *Evil Consequences and Effects*, yet may not *immediately* admit of a *plain and positive Evidence*.

Since therefore these *Supreme Powers* are necessary for the *Common Safety*, and no Person can assign any other Bodies of Men in *England*, that are more fit to be Entrusted with these Powers than the *King, Lords and Commons*; every Rational Man ought to submit to the *Establish'd Government*, and not presume to argue against it, upon any Supposition of *Mismanagement in the King, Partiality in the Lords, or Delay in the Commons*; since it is the *Highest and Best Security* for the *Rights and Liberties of the People of England*, that the *Nature of the Government* will admit.

And when there is Occasion to *Debate* concerning these *Supreme Powers of King, Lords or Commons*, we must not argue like *Lawyers in Westminster-Hall*, from the *Narrow Foundation of Private Causes of Meum and Tuum*; but like *Statesmen and Senators*, from the *Large and Noble Foundation of Government*, and of the *General Good of the King and People*.

But altho' these *Supreme Powers* are above the *Jurisdiction of all Inferior Courts*, and may be Exercised according to the *Discretion of the Respective Parties*; yet *They must of Necessity be Limited and Bounded by one another in such a manner, that one may not be allowed to Encroach on the other*; And that it may not be in the *Power of any one to defeat the Right or Power that is Lodged in any other, or render the same Impracticable*; but that all *Three may Subsist together for the Common Good, and each of them be able to Attain the End for which they were Established*: For if otherwise, the whole *Design of the Constitution* will be *disappointed*, and these *Three Powers* will not be *Checks* one upon another, nor be *Mutual Securities to Preserve the Common Safety*, as was intended.

This is the *plain Rule*, by which we are upon all Occasions to *measure and set out the Bounds and Limits of the Legal Authority of the King, Lords and Commons*. This is the *Infallible Touchstone*, by which we are to *trie the Legality of all Claims and Demands of Power by every Branch of the Legislative Authority*: This is the *Ne Plus Ultra*, the utmost Boundary to their *Respective Authorities*.

Hence it is that the *Commons* have always insisted, That the *King's Great and High Prerogative of Pardoning Offenders* is yet so limited and restrained, that it cannot extend to *Pardon Impeachments*; because the *King cannot defeat that Power in the Commons, which is appointed as a Check upon the Prerogative it self*, and is the *Great Bulwark of the Rights and Liberties of the People, against an Evil Ministry and Arbitrary Power*. For if the *King can Command an Unlawful thing, to the prejudice of the People, and afterwards Pardon the Evil Minister that puts that Command in Execution*, there can be no manner of *Security for the Rights of the People*.

Hence



Hence it came to be Determined in the Case of the Five Popish Lords ; *That the Office of High Steward, upon Trials of Peers, is not Necessary to the House of Peers, but that the Lords may proceed in such Trials, if a High Steward be not Appointed according to their humble Desire* : Because, if such an Office were necessary, then the King (by not Appointing a High Steward) might defeat the Judicature of the Lords, and render the Exercise of that Power *Impracticable*, which is Appointed as another Check upon the Prerogative, and to prevent any *Encroachment* on the Rights of the People.

And hence it is, that neither the *Lords* nor *Commons* can have such a *Legal Power*, which is able to defeat the Power of each other ; and which would only be a Power to Destroy the *Ballance* of the Constitution, and Ruine themselves.

And thus it appears, that the several and respective Powers Vested in the *King, Lords* and *Commons*, are *Mutual Checks and Mutual Boundaries* to one another, but are not to be Limited by any Authority besides their own.

These Supreme Powers therefore are as great as the nature of such Powers will admit, and as the *King, Lords* or *Commons* can Reasonably desire ; and *the greater they are, the greater are the People of England, for whose Security they were Established* : But then they must agree together in the Exercise of their Powers, and not Interfere or Clash with one another, for thereby they will both destroy themselves, and the End for which they were Established.

Every Body Natural (that has a Rational Soul) hath an Understanding, a Will, and a Memory, for the Safe and Prudent Government of that Body ; and the greater and more Extensive those Faculties are, the greater is the Happiness and Safety of that Body Natural : So, in the *Great Body Politick of the Kingdom*, the *King, Lords* and *Commons*, do Compose the *Soul of that Body Politick*, and are Entrusted with the Safe and Prudent Government thereof ; and the greater those Powers are, the greater is the Happiness and Safety of that Kingdom.

But as in the Body Natural, if the *Understanding* pretends to Judge before the Memory has truly Stated the Case, or the *Will* to make a Choice, before the Understanding is Consulted, the End for which these Faculties were appointed will be defeated—So the *King, Lords* and *Commons*, must Agree together, and Assist each other in the Exercise of their several and respective Powers, without the least *Encroachment* upon one another, or else they will not Answer the End for which they were Established.

The *King* therefore may Exercise his *Prerogative* to the highest Extent of Power that the Nature thereof will admit, and that does not *Invade* or *Defeat* the *Just Rights* of the *Lords* or *Commons*.

And the *Lords* may Exercise their *Right of Judicature* to the highest Extent of Power that the Nature thereof will admit, and which does not *Invade* or *Defeat* the *Prerogative* of the *King*, or the *Rights* of the *Commons* ; and the *Commons* may Exercise the Power of *Impeaching, and Prosecuting Evil Ministers, Vested in them, for the Security of the People*, to the highest Extent of



of Power that the Nature of the Thing will admit, and that does not Invade or Defeat the *King's Prerogative*, or the *Just Right of Judicature* in the *Lords*: But none of them can Extend their Power to Defeat, or make Impracticable, the Power of any of the other, without destroying the *Ballance* of the Constitution; and, in the Consequence thereof, Destroying themselves.

The Three several *Powers* Vested in the *King*, *Lords* and *Commons*, are like the *Three Perfect Conchords in Musick*, which being exactly Tun'd to one another, upon proper Instruments, make admirable Harmony; but if you stretch any one String, beyond its proper pitch, you put all out of Tune, and destroy the whole Confort.

But as a *Dischord in Musick* may sometimes be brought in, to make the *Ear* more sensible of the sweetness of the following Conchord, so a *Dischord in Politicks* may possibly give occasion to many persons to take more Notice of, and be better Pleased with the Harmony and Excellency of the *Established Government*.

And herein consists the Excellency of the Government of *England*, That it is not only the best sort of Government in the World, both for the *King* and the *People*, when the Happy Constitution thereof is Preserved, but it is admirably well Contrived, and every thing provided that was possible for its Preservation: For,

Our Wise *Ancestors* have so Prudently disposed and distributed the Supreme Powers, in the Original Frame and Constitution of the Government, that it is manifestly the Interest of *King*, *Lords* and *Commons*, Inviolably to Preserve to each other the several and respective Rights and Powers belonging to them, and not to Encroach upon one another. For,

In case any *Incroachment* be made on the *Prerogative* of the Crown, it will only lessen that Power that is to Protect the *People*, and consequently lessen the *Safety* and *Security* of the *People*, that are to be Protected by that Power.

And in case any *Incroachment* be made on the *Rights* and *Liberties* of the *People*, or of their Representatives, it will only lessen that *Strength* that is to Support the *King*, and consequently lessen the *Power* and *Interest* of the *King*, that is to be Supported by the *Strength* and *Treasure* of the *People*.

And so in case any *Encroachment* be made on the *Legal Jurisdiction* of the *House of Lords*, it will only lessen that Power, that is the very *Band of Union* between the *King* and the *People*; and consequently, lessen the *Security* of both *King* and *People*, that is to be Preserved by that Mediation.

And there has not only been Care taken to make it the *Interest* of all Parties Concerned to Preserve the *Established Government*, but the Nature of the *Establishment* is such, that it does in a manner Preserve it Self: For the *Supreme Power* is not Lodged in *One*, lest he should be Arbitrary; not in *Two*, lest they should fall out, and there be none to interpose betwixt them; but,

Such is the Happy Constitution of this Government, that it consisting of *Three* distinct Branches of the Supreme Authority, who are Mutual Securities, and *Checks* one upon another, for the *Common Safety*, if a Misunderstanding happen between any *Two*, there is still *One* left, whose Interest it is to Reconcile the Difference: And if any *One* endeavour to Advance their Power beyond its Just Bounds and Limits, there are always *Two* against that *One* to Preserve the *Ballance* of the Constitution.

But the *Excellency* of the Government of England, is not only Proved by Reason, but by *Long Experience*; this Nation having, for many Ages, Flourished under the *same* Constitution of Government, by *King, Lords, and Commons*, and from Generation to Generation preserved their *Liberties*, whilst many of our *Neighbours* have lost their Ancient *Form* of Government, and their *Liberties* together.

## CHAP. II.

*Of the Establishment of Publick Officers and Ministers of State, and how the Rights of the King and the People are thereby Secured.*

**I**N Order to Preserve a Right Understanding between the King and the People, and that no Mismanagement in the Government be Imputed to the King, nor yet any Wrong done to the People, without a Remedy, It is Necessary that all Publick Acts of Government be performed by Publick Officers; for if done by the King, and any Mismanagement happens, either the People must lose their Rights, or the Blame be Imputed to the King: Neither of which ought to be Admitted.

That therefore these Publick Officers be Answerable for all Publick Acts done by them, both to the King and to the People; and in Order thereto——

That all Grants, Patents, and Publick Acts of Government, be Enrolled, and made Matter of Record.

That these Publick Officers, or the Chief of them, as the Lord Chancellor, and the Lord Treasurer of England, the Judges, &c. do take an Oath of Office, and therein, (amongst other things) Do Swear, well and truly to Serve the King and his People in the Office of Chancellor or Treasurer, &c. respectively.

That

That such a Prudent *Etablissement* be made of all these *Publick Officers*, that one may be a *Check* upon another, for the *Common Safety* : And that no *Person* presume to undertake any *Two Offices*, that are *Checks* one upon another, whereby the King and People lose one of the Great *Securities* for the Safety of the Nation, and the Officer is left at liberty without *Controul*, to act contrary to his Duty, and the Interest of the *Publick*.

That the *King* have the Power of appointing *Publick Officers* at his Will and Pleasure, for the *Security* of his *Prerogative*. The *Representatives* of the People have a Power of *Impeaching* them for any *Mismanagement*, and Breach of Trust, for the *Security* of the *Rights and Liberties* of the *Commons* of *England* : And the *Lords* have the Power of *Judging*, whether their *Actions* are *Justifiable* or not, for the *Common Security* of all Parties.

The *Exercising* all *Publick Acts* of Government, by *Publick Officers*, is no *Restraint* upon the Just *Prerogative* of the *King* : First, Because the *King* has the *Choice* of them, from time to time, at his Will and Pleasure. Secondly, Because these *Ministers* are Bound to Obey the *King* in all *Lawful Things*. And the *Law* presumes, That no *King* (who is the Father of his Country) will *Command* that which is *Unlawful* ; or if he do, That when he is made *Sensible* of it, he will *Recal* his Order.

The *Law* therefore wisely Provides for the *Safety* of the People, without *Involving* the *Prerogative* of the Crown, and has made it not only the *Duty*, but the *Interest* of every Minister (for his own Safety) to Inform His Majesty of the Legality of all Proceedings : 1. *By Words*, by an humble Declaration of the Sense of the *Law* : And if that will not prevail, then to Convince His Majesty of his *Sincerity*, by his *Actions* ; and that is by a *Resignation* of his *Office*.

All *Good Princes* will be Convinced by this *Rational, Honourable*, and *Self-Denying* Argument, and will rather Commend the *Fidelity* of his Minister, then be Offended with him. But if it should happen hereafter, in a future Reign, that the Prince will not be *Advised*, but shall Accept the *Resignation* of his Officer, That Minister will have the Satisfaction of Suffering in a *Good Cause*, for the *Safety* of his Country, and Gain very great *Honour* to Himself and Family : And the *People of England* will still have the same *Security* for their *Rights and Liberties* as they had before.

For if the succeeding Minister betrays his *Trust*, he must expect to Answer for it in the *House of Peers*, on the *Impeachment* of the *Commons* : And if he also, in humble manner, desires to be Excused from Executing the same *Unlawful* Command, to the Ruine or Prejudice of the *People*, The *King* (who cannot Exercise any *Publick Act* of Government but by his Ministers) will at last observe the *Necessity* of yielding to the *Law* of the Land.

These are the *Wise* and *Prudent* Methods, our Forefathers have *Devised* and *Established*, to Preserve the *Rights and Liberties* of the People, without any *Force* or *Violence* on the *Royal Person* of the *King*.

These are the *Dutiful* Ways of keeping Princes within the *Bounds* of *Law* ; not by *Rebellion* and *Resistance* against the Person of the King, but by *Faithful Council*, and *Self-denial* in the Subject. And it is the Miserable Neglect of



of Ministers, in the Faithful Discharge of this Part of their Duty, that frequently Leads Princes into those Errors which sometimes prove Fatal to them.

Could we but persuade the Ministers in all Reigns, thus to Discharge their Oaths of Office, and Duty both to their King and their Country, this Nation would not so often fall into Convulsions of Government, that frequently Endanger the whole Constitution.

The Exercising therefore all Acts of Government by Publick Ministers, is so far from being a Prejudice, that it is a great Advantage and Security both to the King and to the People: To the King, because no Mismanagement can be imputed to Him, but to his Ministers: To the People, because they may have Redress for their Grievances, without any Misunderstanding with their Prince.

By this Means the King may always Reign in the Hearts of his Subjects, and the Subjects always Preserve their Rights without Offence to the King.

The King has the Power of preferring Honest Men, which is all a Good King desires in the Nomination of Publick Officers. And the Lords and Commons have the Power of punishing Dishonest Men; which is both for the Honour and Safety of the King and the People.

King Charles the First, in his Answer to the Nineteen Propositions, doth set forth, That the King, the House of Lords, and the House of Commons, have each particular Priviledges: And (after Enumerating the several Prerogatives of the Crown) His Majesty declares, That the Prince may not make Use of that High and Perpetual Power, to the Hurt of those for whose Good he hath it; and make Use of the Name of Publick Necessity, for the Gain of his Private Favourites and Followers, to the Detriment of his People. And then adds, That the House of Commons (an Excellent Conserver of Liberty, &c.) is solely Entrusted with the Power of Levying Money, and of Impeaching those Ministers, who, for their own end, (tho' Countenanced by any Surreptitiously-gotten Command of the King) have violated the Law, which he is Bound, when he knows it, to Protect; and to the Protection of which, the Ministers were Bound to Advise him, or, at least, not to Serve him in the contrary. And the Lords being Entrusted with a Judicatory Power, are an excellent Skreen and Back between the Prince and the People; To Assist each against Encroachments of the others, and by such Judgments, to perform that Law which ought to be the Rule of every one of the Three.

Whoever therefore affirms, That the King's Command doth Justify the Minister in doing an Unlawful Act, maintains a Proposition that destroys the Original Frame and Constitution of the Government; and consequently, the Happiness and Safety both of the King and of the People.

He destroys the Happiness and Safety of the King, by imputing the Blame of doing an Unlawful Act to the Prince, and excusing the Minister. He destroys the Happiness and Safety of the People, by depriving them of the only proper Means for Redress of Grievances:--- For the People of England have no Relief, in case of Mismanagement, but either against the King or his Ministers. But to seek Relief against the King, is a Remedy worse than the Disease:--- Is against the Nature and Constitution of our Government, and

would be an Occasion of Creating a *Misunderstanding* between the *King* and his *People*, which is a Principal Thing to be avoided : And therefore the *People* must *either* have their Remedy against the Ministers, or *none* at all : And to be *without* any Relief or Redress of Grievances, would quickly end in the *Ruine* of the *People*, and *Destruction* of their *Rights* and *Liberties*.

If the *People of England* have no Relief, in case their *Rights* are *Invaded*, then they have no *Security* for those *Rights* : And if they have *no Security*, if they are *precarious* on the Will and Pleasure of others, it is the same thing in effect, as if they had no *Rights* and *Liberties* at all ; for a *Right*, without a *Remedy*, is not properly a *Right*, but a *Favour* or *Courtesy*, to be Enjoyed during Pleasure.

In all Regulated Monarchies, the *King* is to Act according to the *Laws* of the Land ; but the *Laws* of the Land being numerous and difficult to be understood, it cannot be presumed that a *King* can spare time to *Study* the *Laws*, and attain to the *perfect Knowledge* of them : Therefore our *Wise* and *Prudent* Ancestors have provided, that the *King* shall be *Guarded* by his Councillors and Great Officers, who are to understand the *Laws* at their *Peril*, and to be *Answerable* both to the *King*, and to the *People*, for all Publick Acts that pass through their Hands.

These Great Officers of State are placed like *Centinels* at several Distances, to be *Mutual Checks* one upon another, and to keep *constant Watch*, for the Common Safety of the *King* and *People*. Observe, therefore, the *Progress* which the *Law* has directed in *Passing* of Ordinary Grants and *Patents* : 1. A *Petition* is made to the *King* ; Then this *Petition* is *Referred* to the *Lords* of the *Treasury*, by an Order of Reference, signed by a Secretary of State ; and if the *Lords* of the *Treasury* make a Report in favour of the said Grant, then the *King* Signs a *Warrant* to the *Attorney*, or *Solicitor-General*, Impowering one of them to prepare a Bill containing such a Grant. After Mr. *Attorney* or *Solicitor* has passed the same ; then it goes to the *Privy Signet*, the Custody whereof is in the *Secretary of State*, who being a Minister in High Office, is presumed by the *Laws* to be watchful for the *King's* Good, and the Welfare of the *Publick*.

The *Warrant* being thus Signed by the *Secretary*, is carried to the *Lord Privy-Seal*, who is another Great Officer, well Versed in Matters of State, and in the Knowledge of all the *King's* Affairs ; and this *Great Officer*, by the *Oath* of his *Office*, is oblig'd to take Care that His Majesty is not *deceived* in his Grant : And in case a Private Subject is concerned in the Consequence thereof, he may enter a *Caveat* at the Office, and be heard before the *Lord Privy-Seal*, before the Grant Passes that Seal : But in case the same doth Pass there,

Then the Grant is carried to the *Lord Chancellor*, or *Lord Keeper* of the *Great Seal* of *England*, who is always a Person of great Ability and Knowledge of the *Law* ; and who, by his *Oath*, is bound to the *Observance* thereof, and to *Advise* the *King* to the best of his Skill and Knowledge, for the *Universal Good* of the *King* and his *People*, and is not to suffer any Grant or Patent, *prejudicial* to the *King* or *People*, to Pass the *Great Seal* of *England* : And any Subject concerned, hath also a Right to Enter a *Caveat* at the *Great Seal*, and to be Solemnly Heard before the *Lord Keeper*.

And as soon as any *Patent* is Passed the *Great Seal*, before it goes out of the



the Care of the Lord Keeper, it ought to be Enrolled in Chancery, and made a Matter of Record, in Justification of the said Lord Keeper; to defend the Patent from any Alteration or Forgery, and for the Common Security of the King and all his Subjects.

Thus you see the great Care that is taken for the Common Safety; If an Enemy surprize the first Centinel, or Publick Officer, and is able to obtain his Pass there, yet, when he comes to the second, there he is bid to stand again: And if by any Art or Corruption he Passes through that, and all the rest of the Offices, yet when he comes to the Lord Chancellor, or Lord Keeper, there he meets with another full stop, and the strictest Examination; and as soon as a Grant is passed the Great Seal, it is Enrolled, and made a Matter of Record.

So that if any of these Great Officers are honest Men, all is Safe, the Design is discovered, and the Enemy defeated: And when the Law requires so much Care in every the least Grant, how can it be imagined that the Law requires less Care in Grants or Patents, relating to the whole Kingdom?

But to what End is all this Formality, and great Number of Officers appointed? if the King's Warrant must positively be Obeyed, whether the Matter therein contained be Lawful or not? Any one Officer can Execute a Command of this kind as well as twenty; what can then be the reason of it, but that in the multitude of Counsellors there is Safety? For a Number of Officers are less liable than One, either to Corruption, or to a Mistake in Judgment; but if all these Officers are to take the Warrants or Orders, one from another, as a sufficient Authority, if that were all that was expected from them, there had been no need of such a Constitution, or such an Unnecessary Charge to the Government: our Ancestors therefore, have not only oblig'd all these Officers to Fidelity, by Oaths of Office, but wisely considering, that it was not possible to know what Advice a Minister of State might give in private to his Prince, have prudently provided, That they shall prove their Integrity by their Actions; that is, By doing Nothing but what is Lawful, or else by a Resignation of their Office.

They were sure every Officer would give good Advice, when he was to do it at his Peril; he would Argue and Plead hard to Convince his Prince of the Unlawfulness of an Action, and use all his Interest to dissuade him from it, when his Majesty's persisting did present such Officer with no other prospect than an Impeachment of the Commons, or a necessity of Resigning his Office.

'Tis well known, that Princes are frequently surprized in these Cases; and by Misrepresentations in the great hurry of Publick Affairs, many Warrants have Sur-reptitiously been obtained, and others have been granted meerly to satisfy the Importunity of Courtiers, when the Prince himself did not expect that any of those Warrants should Pass through the Hands of the Great Officers: But if Kings Grant Warrants depending on the Fidelity of their Ministers, and the Ministers Execute Warrants depending on the Authority of the Prince, it's plain that neither the King, nor the People, will have any Security by this Constitution.

A Warrant from the King, is indeed a Command to his Officers, but it is upon an Implied Condition in Law (well known,) In case the Matter commanded be Lawful, and no ways prejudicial to the King or the People. And such a Warrant is Necessary in all Cases, as the first Step, the Primum Mobile, or the Spring that sets all



*all the Wheels of Government a going.* But then the *Legal Artist* must at his peril take care, that the *Spring of Power* be neither *too strong to break the Wheels of Government*, nor *too weak to support it Self*: But that it be so regulated, according to the known *Laws of the Land*, as to answer the *Ends of Government* for which it was *Establish'd*, and preserve the *Common Safety of the King and the People*.

This is a *Doctrine* which perhaps will not be very agreeable to such *Ministers of State*, who shall at any time hereafter think themselves *Safe*, if they can by any *Means whatsoever* obtain the *King's Warrant*, (*which a Sett of Corrupt Ministers may always be able to do for one another*;) but it is the only *Doctrine* that hath, or can make the *King and People happy*, and save *England* from *Ruine and Destruction*.

'Tis true, that of later *Times*, several *Errors* have crept into the *Happy Constitution* of this *Government*, and the *King's Warrants* have, in some *Cases*, been carried immediately from the *Privy Signet* to the *Great Seal*, without ever *Passing the Scrutiny of the Lord Privy-Seal*; but this is an *Error* that manifestly lessens the *Security of the King and People*, and is to be *Rectified*.

However, this does not *Excuse the Lord Chancellor, or Lord Keeper*, for the time being, from doing their *Duty*; but, on the contrary, the less *Care* was taken of a *Warrant* before, the more ought to be taken when it comes to the *Great Seal*.

And thus the difference may appear between the *King's Letter* and the *King's Warrant*. The *King's Warrant*, in some *Cases*, passes through the *Hands of the Lords of the Treasury, the Attorney General, and one of the Principal Secretaries of State*; and, in all *Cases*, through the *Hands of one, or more of them*, who are *Publick Officers and Sentinels*, appointed to *Watch for the Publick Safety*; and on whose *Judgment and Advice*, both the *King* and the *People* do very much depend. But the *King's Letter* is a *Private Transaction*, and is not attended with these *Advantages* to the *Publick*: Therefore, when any *Patent* is passed upon the *King's Letter*, without a *Warrant*, that *Patent* is passed contrary to *Law*, and the *King and People* are thereby deprived of those *Securities* that the *Law* has Appointed for the *Common Safety*.

And hereby it plainly appears, That the setting the *Great Seal of England* to any *Patent with a Blank*, cannot be justified; for every *Patent* ought to be *Complete and Perfect*, and *Enrolled in Chancery*, both for the *Security of the King and the People*, before it goes out of the *Care of the Lord Keeper*. And when the *Prince* is *Acquainted with the Law*, in this *Case*, he will always come to a *Resolution* in every *Particular*, before his *Orders* are carried to the *Keeper of the Great Seal*.

How can it be consistent with the *Oath of a Lord-Chancellor*, That he will well and truly *Serve the King, and his People, in the Office of Chancellor*, when he does a thing that he cannot know himself what may be the *Issue of it*? Whether the *Words* that shall be *Inserted in that Blank*, may be for the *Good of the King and Kingdom*, or for their *Destruction*?

How

How can it be consistent with the *Great and High Trust* reposed in a *Lord Chancellor*, who has the Custody of the *Great Seal of England*, to leave an *Affair* of the *greatest* Consequence to the Nation, to *Accidents and Uncertainties*? When a *Patent* is out of his sight and reach, he can neither know what will be Inserted in any Blank, nor by whom; nor into whose Hands the *Patent* may fall, nor what other Alterations may be made therein, especially if it should so happen that the *Patent* is to go into a Foreign Country, and run the hazard both of Robbers at Land, and Pirates at Sea: And when there is no *Record* in *Chancery* to be a *Check* upon this *Patent*, and to Detect any Alteration or Forgery in the same.

But whenever there shall be *several Blanks* left in a *Patent*, and *one Blank* of an *intire Sheet*, large enough to insert therein Unlimited Powers, and Convey away *England or Ireland* to the *French King*, how can such an *Action* be Justified, with *Safety* to *England*, and the *Constitution* of the Government?

And from hence also it may appear, how *inconsistent* it is with the *Safety* of the *King and Kingdom*, and the *Trust* reposed in these Great Officers, that they should take any *Grants* of the *King's Revenue* to their own private Use: For shall that *Great Officer*, who is Appointed to take Care that *the King be not Deceived* in his Grant, be the *Taker* of the Grant himself? What is this but to Appoint Officers as Sentinels to *Watch* for themselves, and *not* for the *King*? To give them an Opportunity to *Deceive*, and not to keep the *King* from *being Deceived*? It can never be consistent with *Reason*, or the *Wise Constitution* of the *English Government*, to Trust any Man in his own Case; *either that Person* ought to be *no Officer*, or *that Officer* ought to take *no Grant*: For if this be once Established as a *Precedent*, and Declared to be Lawful, 'tis plain, that all the Care that is taken to preserve a regular Course in the *Exchequer* for the Security of the Crown is Evaded and Defeated; which is Absurd, and a Contradiction to the very Design and Intent of the Original Constitution.

'Tis true, that such things have often been done without Punishment; but it is *as True*, that such Offences have been punished: And that whenever *such an Officer* was called in question, *that Offence* was always made an *Article of Impeachment*. There has indeed been frequent Robbing on *Shooters-Hill*, but will *that Usage* Justify the Legality thereof, at any Trial at Law? No, the oftner it has been done, the *more* need of Redress.

But whenever a Great Officer of State, upon whose care and fidelity the *King* and the People do chiefly depend, shall take Grants of the *King's Revenue* in time of *War*, when the Nation is Oppressed with heavy Taxes, and large Debts, and when the Grants shall be taken in other Persons Names, the better to cover a Fraud, or elude the force of a Law; and when considerable Rewards shall be given to inferiour Officers, to make proper Discoveries for that purpose; or when such a great Officer shall pretend to make a *Purchase* from the Crown, and never pay in his Money, but perhaps by a *Fictitious Talley*, or some other Artifice, shall avoid the Payment, any such *Deceit*, in so Great an Officer, contrary to his Oath and the Duty of his Office, will always be Esteemed (as in Reason it ought to be) a very great Aggravation of the Offence.

But as these Great Officers cannot Legally take to themselves any *Private Grants* from the Crown, to much less any Grants of a *more Publick Nature*, where the Justice of the Nation is Concerned, and where the Interest of those great Officers may probably Interfere with the Rights of the Subject.



The Judges of *Westminster-Hall* cannot take a Grant of any Man's Estate before Conviction, because it would then be their Interest to Convict him, whether Guilty or not, which would bring a great Hardship upon the Subject, and occasion many false Accusations; and the most Innocent Subject would be forced, in that Case, to Compound at any rate for the hazard of his Life.

The same Reason holds good in all other Cases, where the Takers of the Grants, or the Profits thereof, may in any probability become Judges and Parties, in the same Case. As if any Grants should hereafter happen to be made of Goods and Merchandizes taken on Board of Pirates, before Conviction, to several Great Officers of Justice, and Ministers of State, or to any other in Trust for them; the Honest Merchants, from whom these Goods were first taken by the Pirates, making their Claim within a Year and a Day, and Proving their Title to the same, have a Right to have their Goods restored to them; but what a Condition will the Poor Merchants be in, in that Case? If they go to *New-England* to Sue for Justice, there the Governor may be Judge and Party against them: If to the Admiralty in England, there may be another Judge and Party Presiding at that Board: If to the High Court of Chancery, a Judge and a Party may be there also, concerned in Interest against them. If they Apply to the Council, there may be a great many Parties Interested against them. So that the Property of the Subject may (in effect) be defeated by such Grants; for since the Remedy is made so difficult and in a manner impracticable, who would not rather lose his Goods, than attempt to recover them at vast Expence against such Potent Adversaries? Who would be so unwise as to throw away his Money and Time, upon so desperate a Remedy?

So that it seems very Rational to conclude, That such sort of Grants, to Publick Officers of Justice, and Powerful Ministers of State, cannot be Justified; or else, that there is a manifest defect in the Constitution of the Government, which ought not to be Allowed: For it is a Fundamental Maxim of our Government, That no Man shall be Judge in his own Case, but that the Duty and Interest of every Officer be one and the same, and go Hand in Hand together, for the Common Safety of the King and the People, and not Interfere with one another; and therefore that Publick Officer that takes a Grant to himself, or to any other in Trust for him, whereby he doth, or may, become both Judge and Party, or which makes it his Interest to act contrary to his Duty, is manifestly Guilty of a Breach of the High Trust reposed in him; for such a proceeding tends to the Obstruction of Justice, to the Dishonour of the King, and to the Violation of the Property of the Subject.

And here we may observe the Excellency and Wise Contrivance of the Constitution of this Government; for how is it probable that any Prince should Understand whether such Grants as these are Legal or not? The Pretence of destroying Pirates that Infest the Sea, Disturb the Trade, and Invade the Properties of English Merchants, is plausible and fair, and what the best of Princes are desirous, and think themselves obliged to Accomplish, for the Good of their Subjects: But then the Publick Officers ought, at the same time, to Acquaint His Majesty, that the doing of this, is a Royal Prerogative inseparably Annexed to the Crown, and not fit to be Entrusted with any private Subjects, for their own particular Advantage, much less with such Publick Officers of Justice, and Ministers of State, as are before described.

The



The King is the Father of his People, and it is not his Interest to do Wrong to them ; and in case any Dispute arises, indifferent Judges are Appointed to Decide the Controversy ; but *when Grants shall be made of Goods before Conviction, and the Judges shall be Entitled to the Benefit of their own Judgments and Decrees*, the Subject must needs be in a very Miserable Condition.

And therefore it is Wisely provided, by Our Constitution, *That the King shall be Guarded by his Officers and Ministers*, who are Bound to Understand the Business they Undertake ; to give His Majesty a Just and True Information of the Law upon all Occasions, and *at their Peril* to avoid the passing any illegal Grant ; and *that no Blame or Wrong be Imputed to the King, but to his Ministers.*

### CHAP. III.

#### *Of the Security to the Publick, from the Establishment and Use of the King's Councils.*

**A**S the Law has a great Regard to a *Private Grant* of the Crown, so more especially to those *Publick Acts of Government*, to those great and weighty Grants and Patents that relate to the *Common Welfare and Happiness of the King and Kingdom.*

And therefore in all Publick Acts of State, as making War and Peace, Calling and Dissolving Parliaments, &c. by the Original Constitution of this Government, The King is to be Advised by his *Privy-Council*, which is called, *Concilium Regis Privatum & Concilium Regis Secretum*. These Privy-Councillors are *Partes Corporis Regis*, they are *Incorporated into the Monarchy*, and are Bound by the Ancient Oath of a Privy-Councillor (amongst other things), *To keep Secret the King's Council, and to Advise the King in all things to the best of their Skill and Knowledge, for the Universal Good of the King and his Land ; and for the Peace, Rest, and Tranquility of the same.*

This Institution can be no Restraint to the Just Power and Prerogative of the King, because the King has the Choice of his Councillors ; and if he does not Approve of the Advice of one Council, he may Choose another.

And, as has been said before, the King being *Pater Patriæ*, can't be supposed to desire any thing but the Publick Good : And no Man can imagine, that any Wise or Good King would attempt any Undertaking, relating to the Publick, which he could not get *Twelve Men in England* to think Safe or Reasonable.

This Institution therefore, as well as the Appointment of the Great Officers of State, is for the *Security* of the King and the People : *Of the King*, because no Blame can be Imputed to him, but to his Council : *Of the People*, because the Privy-Councillors being upon Oath, and being Answerable to the Parliament, have Reason to take Care to give such Advice as shall be Advantageous for the Publick Good, or at least consistent with the General Interest of the King and Kingdom.

'Tis

'Tis true, a bad Prince may get a bad Council, and may do bad Things, but then the Parliament have Relief against the Council, and Preserve their Prince.

And therefore, both Good and Bad Princes have reason to Approve of this Institution ; for if they are *Good*, they will be glad of Good Council ; if they are *Bad*, they'll rather Choose that their Councillors should suffer than themselves. And it will be very difficult to find out more than one Instance, in all the *English* History, where any King ever Suffered in *England*, but where the Prince was either so Imprudent as to take all the Faults on himself, and Excuse his Ministers ; or, at least, to Protect them from the usual Methods of Justice, by refusing to refer them to a Free Parliament.

Observe therefore the Steps that are taken for the Common Safety : *First*, There are Great Officers of State, to Observe and Watch that nothing Passes to the prejudice of the *King* or the *People*. *Secondly*, If a Matter be too high for their Determination, then it is considered by the *King* and his *Council*, where the Matter is not only Determined by a greater number, but also upon a Solemn Debate and Hearing of the Arguments of all Parties : Which may be compared to a Consultation of able Lawyers or Physicians, conducing very much to the Safety of the Publick ; but if the Matter be of such Weight and Difficulty, that the Council don't think fit to Determine the same, or cannot come to a safe Resolution, then they humbly Advise the King to refer that Affair to his Great Council assembled in Parliament ; and by this Means, all are Safe without prejudice to any one.

And here it may be observed, that an Error has formerly Crept into this Part of our Constitution ; and that is, *By Determining Matters of the highest Importance without Advising with any of the Established Councils*. The Original of which, in the late Reigns, seems to be derived from the Precedent of *France*, where it was first Invented as an Introduction to an Arbitrary Government ; and 'tis to be doubted, that they were no true Friends to the Constitution of this Government, who first brought that evil Custom into *England*.

'Tis true, former Princes did sometimes Advise with particular Persons, before they offered a Matter to the Council to be Debated and Determined ; but it's an Innovation by Evil Ministers, that War and Peace, and Matters of the highest Consequence, should be finally Concluded in a *Secret Cabal*, and only pass through the *Privy-Council* for Forms sake, as a Conduit-Pipe, to Convey those Resolutions with Authority to the People.

All Proclamations, for Declaring War, &c. are constantly set forth in the Name of the *King*, with *Advice of his Council*, (which shews that it ought to be so) when, perhaps, the War was Resolved in a *Private Cabal*, and only Declared in a *Privy-Council*, and Published with that Authority to the People ; which is an Abuse of the Constitution.

'Tis therefore a Noble Resolution in His Majesty, to Restore to *England* the Practice of their Ancient Constitution, to Repair the Breaches and Innovations brought in upon them in the late Reigns, and not only to Declare, but Debate and Transact all Matters of State in the *Privy-Council*.

Such



Such a Proceeding tends very much to the Honour and Safety of the *King*, and the Satisfaction of all the People of *England*.

But upon what has been said of the Nature and Authority of the Privy Council, it may appear, that as to the setting the Great Seal of *England* to a Foreign Alliance, the Lord Chancellor or Lord Keeper, for the Time being, has a plain Rule to follow; that is, humbly to inform the *King*, That he cannot Legally set the Great Seal of *England* to a Matter of that Consequence, unless the same be first Debated and Resolved in Council; which Method being observed, the Chancellor is Safe and the Council Answerable.

And if a Matter of that Moment shall be hereafter referred to one of the Lords Justices, and such as he shall think fit to Advise with, in the *King's* Absence, it would be an astonishing thing to hear, that a Person of that high Trust and Station, and of great Learning and Knowledge in the Law, and in the Constitution of the Government, should neither advise with the Privy Council, nor so much as communicate the same at any Solemn and Usual Meeting of the Lords Justices, that shall then equally be Entrusted with the *Regal Power*, and Safety of all *England*.

'Tis true, That an Alliance made by the King, and Sealed with the Great Seal of *England*, may be good and valid in Law, and so accepted by all Foreign Princes, whether the Treaty was Concluded and the Great Seal affixed to it by the Advice of the Privy Council, or not: But this does not lessen, but rather aggravate the Crime of the Officer; for *the greater the Consequence, the greater ought to be the Care not to transgress the Law*.

The Happiness and Prosperity of *England* hath hitherto been preserved by the Constitution of our Government, by *the several Securities and Checks* that are appointed for the Common Safety, and *not by any private Trust or Management*: And therefore, however an Offence against this Constitution may by some Circumstances be Mitigated, yet it can never be Justified.

But as the King has always a Privy Council, so he hath upon Extraordinary Occasions a *Great Council, the Parliament* of *England*, who are Summoned together to Assist and Advise the *King* in Matters of the greatest Difficulty, concerning the State and Welfare of the *King* and Kingdom.

Whenever therefore a Matter of the highest Consequence to *England*, as any Alliance with *France*, hath, and must always be esteem'd, shall be privately carried on by particular Ministers, and the Great Seal of *England* put to it, *during the Sitting of the Parliament, and without Advice of the same*, or even of the Privy Council, that must ever be esteemed a high Breach of the Constitution.

'Tis a Maxim in Law, *Ignorantia Juris non Excusat*, but if Ignorance of the Law will not excuse an Offence, certainly the Knowledge of the Law is no small Aggravation; and therefore that Minister that first expresses a deep Sense of the Dangerous Consequences to the Nation, by any Treaty, and yet at the same time against his own Judgment, and without the Advice of any established Council, affixes the Great Seal to the Ratification of it, cannot plead that as a Mitigation, much less as a Justification of the Offence.

F

Whenever

Such



Whenever therefore any Persons Learned in the Laws and Constitution of the Government, shall severely Condemn the Faults of others, and afterwards do the same and worse things themselves, they ought much more to be blam'd for it.

## CHAP. IV.

### *Of the Nature of the Powers and Proceedings of the Lords and Commons upon Impeachments.*

THE exercising of all Publick Acts of Government by Publick Officers, who are answerable for the same, is not only a great Security to the *King* and the *Commons* for the Reasons aforesaid, but also to the *Lords*; for what can more secure the Power, Greatness, and Dignity of that Honourable House, and keep the Great Ministers within the Bounds of Law? What can make them have greater Regard for the Persons and Properties of the *Lords*, *than this very Consideration, that on all Impeachments of the Commons, the Lords are to be their Judges.*

The several Powers then of the *Lords* and *Commons*, do mutually depend upon and support each other; for as the *Commons* cannot have their Remedy against an Evil Ministry, without the Judicature of the *Lords*, so the Power and Judicature of the *Lords* cannot entirely be preserved, without supporting the Right of Impeachments in the *Commons*.

It is therefore the Interest of the *Lords* and *Commons*, to preserve to each other the several and respective Rights and Powers vested in them; for on the due Execution thereof, depends the Safety and Happiness of both *Houses*.

These Distinct Powers therefore, being lodged in the *Lords* and *Commons*, as Branches of the Supreme Authority, for the Common Safety, ought to be so limited and bounded by one another, that both may consist together for the Common Good, and that it be not possible for either of them to defeat the Power lodg'd in the other.

And therefore as the King himself, *who is the Father of his Country, and whose Justice ought not to be questioned*, is not entrusted by the Constitution, with a Power to defeat the Right of Judicature in the *Lords*, or the Right of Impeachments in the *Commons*, or to render the same Impracticable, because these *distinct Powers* are appointed in the Original Institution of the Government, *as mutual Checks upon the Prerogative, and upon one another for the Common Safety.* So *a fortiori*, it may be argued, That the *Commons* are not entrusted with a Power to defeat the Right of Judicature in the *Lords*; nor the *Lords* with a Power, to defeat the Right of Impeachments in the *Commons*.

And therefore as the Right of Impeachment in the *Commons* must not be so Construed, as to enable them to make the Right of Judicature in the *Lords* impracticable when *they please*; so the Right of Judicature in the *Lords* must not be extended so far, as to enable the *Lords* to make the Right of Impeachments in the *Commons* Impracticable when *they think fit*: But both the Powers must admit of such a Limitation and Construction in the Nature and Exercise thereof, as that they may consist together for the Common Good, and be able to attain the end for which they were Establish'd.

And

And here I must beg leave to observe, That I do not pretend to Treat of the Judicature of the Lords upon *Writs of Error*, or upon Indictments, nor of the Tryals of Lords out of Parliament, for Treason or Felony, by their Peers, nor of any other Authority, but only of the Judicature of the Lords upon Impeachments, which is a Power Lodg'd and Entrusted with the Lords, as a Branch of the Supreme Authority, to do Justice between Prince and People, on all great Offenders, *Publick Officers* or *Ministers* of State, who shall be Impeached in the Name of all the *Commons of England*, for Offences against the State, in Violation of their Oaths, in Breach of the High Trust reposed in them, and to the prejudice of the Rights of the *People of England*: And therefore this Great Power being founded on different Reasons, is different in its Nature, and also Exercised in a different manner from both the other. For,

Upon a *Writ of Error*, the Cause must always be originally Try'd by the Judges in *Westminster-Hall*, and the Matter of Fact found by an ordinary Jury, where all proceedings are to be had, and Judgments to be given, according to the Common and Statute Laws of the Land, us'd and practis'd in all the ordinary Courts of Justice, for the preservation of the Lives and Properties of particular Subjects; and therefore, in this Case, the Lords are to determine upon such a *Writ of Error*, whether the Judges have given Judgment according to the said Laws or not.

But in case of an Impeachment, the Cause comes originally to be Tryed before the Lords, according to the *Law and Custom of Parliament*, which is very different from the Common Laws, and by which their Lordships do Act in a more Extraordinary manner, both as *Jury and Judges*, which is a Method of Proceeding never used in any Inferiour Courts, by the Common and Statute Laws of this Realm; and as their Power is different, so is the Nature of their Proceedings.

And so in the Case of the Trial of a *Lord out of Parliament*, for Treason or Felony, by his *Peers*: There the Lords are only Triors, in the Nature of a Jury of Peers, and not Judges, but the High Steward is the Judge, and pronounces Judgment according to the known Laws of the Land.

And therefore the Office of *High Steward* seems to be a necessary Office in that case, though not in the case of Impeachments, or Tryals before the *Lords* in Parliament, for the Reasons aforesaid.

For, Impeachments not being at the Suit of the King, but of all the Commons of *England*, and being in the time of a Parliament, where every Branch of the Legislative Authority is exalted to a high pitch of Greatness and Power, and where the Powers vested in them, are designed as Mutual Checks one upon another, for the Common Safety, it does not seem agreeable to the Constitution, that the King, by any Pardon, or otherwise, may defeat the Parliamentary Power of Judicature in the Lords, or power of Impeachments in the Commons.

But a Prosecution for Treason or Felony out of Parliament, is at the Suit of the King; and consequently, tho' the Lords are Tryors, the King is to appoint the Judge, and may pardon the Offender. By all which, the difference may appear between the Judicature of the Lords upon Impeachments, and their Lordships Judicature and Power in other Cases.

And therefore to return to the Right of Judicature upon Impeachments, it must be acknowledged, that a right of Judicature, does necessarily imply a power of judging



*ing and Determining*, whether an Offender that is brought to Tryal for any Offence, *be Guilty or not Guilty*, for that is inseparably annexed thereunto.

And therefore the Commons cannot insist on the Right of concurring in the Sentence, and giving their Voices with the Lords, whether the Offender be Guilty or not, without encroaching on the Right of Judicature in the Lords.

But *the appointing* a time for bringing in the Articles of Impeachment, and of *Time and Place for Tryal*, is not necessarily implied in the power of Judicature, or inseparably annexed to it, but is a *Collateral Power*, which may, or may not belong solely to the Judge, as the nature of the case does require.

It must be confessed, That it seems very proper *for every Court of Justice to order and direct such Circumstances and Matters of Form, that can have no Influence to the prejudice of Justice, in such way as they shall judge fit, and where the same are not settled otherwise by any positive Rule.*

But then in the Case of the Fundamental Constitution of the Government, where the whole is at Stake, and where the *King, Lords and Commons* do all depend upon Preserving a Just Ballance of Power, they are not to depend upon the *Will* of each other, but upon the *Power*; and therefore, if by any possibility such a Power may at any time be made use of by the Lords, *to the prejudice of Justice*, it does not seem reasonable, that the same should be allowed in this Case solely to the Lords, without the Approbation of the Commons; for *where the Reason varies, the Collateral Powers may also vary, without any Encroachment on the Right of Judicature.*

If the *Lords*, upon all Impeachments, have an Absolute Power belonging to their Judicature, of limiting a time for bringing in the particular Charge before them; and also, to appoint Time and Place for Tryal of an Impeachment, and to proceed both to Tryal and Judgment without any regard to the *Commons*, whether they are ready, and do Concur or not: Have not the *Lords* then a Power to make the Right of Impeachments in the *Commons* Impracticable, when they think fit? *May not the Lords either appoint a Time so short, that the Commons can't possibly be ready, or a Time so long, that Justice shall never be done; and may not the Place appointed be so distant, or so very inconvenient to the Commons, that they shall not be able to attend the Prosecution of the said Tryal with Effect.*

As in case of a General Impeachment, it may be supposed to be possible, that the Lords may appoint the next day to bring in the Articles, (which perhaps cannot be done so soon in a Parliamentary way of proceeding) and they may appoint the following day for the Tryal to be had at *Truro in Cornwall*, where neither the *Commons* nor the Witnesses can be able to Attend; or else, the *Lords* may appoint the Tryal to be had twenty or forty Years after, by which time all the Prosecutors and Witnesses may be in their Graves, and the Nation undone by an Evil Ministry. All this is possible to be done, tho' not probable; but a wise Constitution of Government provides even against Possibilities (as far as may be) where the Common Safety is at Stake.

If therefore the *Commons* have no Right of Impeachment, but what the *Lords* may defeat, or make Impracticable when they please, then 'tis plain the *Commons* have not such a Right of Impeachment, as is sufficient to answer the End proposed by the Constitution of the Government; which is, to secure the

Rights



Rights and Liberties of the *People of England*, and consequently the *Commons* have (in effect) no Right at all.

And if the Right of Impeachments may be defeated, the Right of Levying Money may, in effect, be defeated too; for what signifies the Power of giving Money for the Safety of the Nation, without the Power of Impeaching Evil Ministers that act to the Ruine of the Nation, or misapply that Money to their own Private or other Corrupt Uses?

And herein (amongst other things) consists the Safety of the *People of England*, That those Noble *Lords* who in any Age might, perhaps, be disposed to save their Friends or Relations in an Honourable Way, or by any Collateral Method of discharging the Prosecution; yet, upon a full Hearing of the Case, will not be diverted from Justice, and especially upon a fair Tryal in open Parliament, where the King is generally present, the whole Body of the *House of Commons*, and great Numbers of Persons of the best Rank and Quality of *England*, besides all the Foreign Ministers, none of them will be perswaded openly to declare upon Honour, that a Person Impeached is not guilty of an Offence, which is then by sufficient Evidence prov'd against him.

And therefore it highly concerns all the *Commons of England*, that *Tryals on Impeachments may not, by any possibility, be defeated by any Collateral Powers in the Lords*; and it seems plain, that we must either reject the Original Constitution of the Government Established by our Wise Ancestors, to preserve the *Ballance of Power*, for the Common Safety of the *King, Lords and Commons*, or else we must conclude, that the *Lords* can have no distinct Power belonging to their Judicature, which is able to surprize the *Commons*, and make the Tryal of Impeachments Impracticable.

And as in the Cases before mentioned against the *King's* pardoning Impeachments, and against the Necessity of having a Lord High Steward in the Tryals of Peers, during the sitting of a Parliament; it was not consider'd, what the *King* in Justice would do towards the defeating the Right of *Judicature* in the *Lords*, or Right of *Impeachments* in the *Commons*, but what in Right and Power he might do if he pleased: So in the Case of a Right vested in the *Commons*, and Secured and Established to them by a proper Distribution of Power, in the Original Frame and Constitution of the Government, for the Common Safety of the *King and the People*. It is not to be considered, what the *Lords* in Justice will do towards the defeating of that Right, but what in Right and Power they may do, if they think fit; for the Safety of *England* is not to depend on the Will of any one House, but on a proper distribution of Power secured to Both.

And tho' all the Deference imaginable ought to be given to that Noble Branch of the Legislative Authority, yet *their Lordships will not expect in this Case to have a greater Trust reposed in their Lordships by the Constitution of the Government, than in the King himself*; nor that the *Commons* should give up the Right of Impeachments, as a Matter precarious, upon Will and Pleasure, which is the great Bulwark of the Liberties of *England*; especially when by so doing, they would not only prejudice the People they represent, but in a good Measure defeat the Power and Jurisdiction of the *Lords* themselves, and destroy that *Ballance of Power*, which is essentially necessary for the Safety of all.

And when it is fully consider'd, it will appear, that 'tis not the Interest of either *Lords* or *Commons*, to have more Power than is necessary to preserve the *Ballance* of the Constitution; for tho', peradventure, either of the present Houses may trust themselves with a dangerous Weapon, yet it is not prudent to Entail such a danger to their

Posterity, lest it should at any time hereafter be turn'd upon them, and this Power misapply'd, to the Ruine of the Constitution.

Those Noble *Lords* therefore, that shall at any time endeavour to preserve the Ballance of the Constitution in this particular, will not act in Derogation, but in Support of the Honour and Power of that Honourable House; and will wisely avoid the Establishment of a Precedent that may render Impeachments Impracticable, and at one time or other subject both *Lords* and *Commons* to the Arbitrary Power and Tyranny of an Evil Ministry.

The way therefore to preserve the Right of Judicature in the *Lords*, and the Right of Impeachment in the *Commons*, without Interfering one with the other, seems to be for both Houses to Concur and Agree in *proceeding to the Punishment of Offenders, as well as to the passing of Laws*: And having adjusted all Preliminaries in a Parliamentary Way, to go Hand in Hand together in the Exercise of the several Powers, vested in them for that purpose, in order to a Fair Tryal of all Offenders; that is, *That the Lords do Appoint Time and Place of Tryal, but that the same be convenient for, and agreed to by the Commons.*

This Method of Proceeding preserves Inviolable the Right of Judicature in the *Lords*, and the Right of Impeachments in the *Commons*, without placing a Power in one, to defeat the Power that is vested in the other.

Whereas, if either claims the Sole Power of appointing Time and Place without Regard to the other, that House seems to claim a Power that is able to defeat the Power of the other House at Will and Pleasure, which by no means is consistent with the Constitution of the Government, or the Safety of *England*.

It is a Maxim in Law and Reason, — *Quando Lex aliquid Concedit, Concedere videtur & id, sine quo, res ipsa esse non potest*; — When Law, when Sound Reason, when the Constitution of any Government gives a Right or Power to one Branch of the Legislative Authority, to be a Check upon another, it gives every thing that is necessary to support that Power, or else it gives nothing at all: And so where it gives a Power to one to be Exercised singly, it gives all that is necessary to support that single Power; but when it gives two Powers (the Right of Judicature and the Right of Impeachments) to two Distinct Branches of the Legislative Authority, to be Exercised by both, as mutual Securities and Checks upon one another for the Common Safety, and it happens that one thing, *viz. the appointing a Convenient Time and Place of Tryal*, is necessary to support them both; it must of necessity give that one thing so far to both, as that it can't be Exercis'd singly by one without the Approbation of the other.

For whatever is necessary to Support two distinct Rights or Powers, cannot be in any one alone entirely abstracted from the other; for then the one will want the Power that is in the other, and will not be supported: And if any one wants what is necessary to support it, as a Power, then it is no Power at all.

Therefore, since a Convenient Time and Place for Tryal of Offenders is necessary both for *Lords* and *Commons*, it seems very agreeable to Reason, that neither of them should have an Absolute Power of appointing the same without the Approbation of the other; for if the *Lords* have that Power in them alone Abstracted from the *Commons*, which is necessary to Support the Power of Impeachment in the *Commons*, then



then the *Commons* have, in effect, no real Power at all: But that Power of Impeachment which they claim as a Right, must be esteemed no more than a Favour or Courtesy, during the Will and Pleasure of the *Lords*; and consequently if there be any weight in this Argument, then it seems, by this Construction, as if the Ax were laid to the Root of the Constitution, and that there were an end of the Right of Impeachments, the Great Security of the Rights and Liberties of the *People of England*.

Therefore in case of Impeachments, where the *Commons* are the Prosecutors in the Name of all the *People of England*, it seems highly Reasonable and Agreeable to the Nature of the Case, that the *Commons* should make the first Step in all that Proceeding. First, by Exhibiting Articles in due time; of which, *they that are to draw them are* (in Reason) *the Proper Judges*. Then by a Previous Signification to the *Lords*, that they are ready for Tryal, and desire their Lordships to appoint a Convenient Time and Place for the same; (which if Inconvenient, the *Commons* desire a Conference, or Free Conference to adjust the same) but if approved, then the *Commons* are to be first at the Place of Tryal, ready to Prosecute; and after Tryal, Judgment is not to be given till the *Commons* think fit to demand the same: For as no Impeachment, so (in Reason) no Step upon an Impeachment is to be made, but at the Suit and Desire of the *Commons of England*.

For all Suits are Prosecuted either in the Name of *the King*, or of *the Commons of England*, or of *Private Subjects*; and they in whose Name any Suit is Prosecuted, may, if they please, let fall the Prosecution, and in no Court whatsoever will the Judges proceed to Tryal, in any private Suit, unless the Plaintiff appear in Person, or by Attorney; nor to Judgment, unless the same be demanded by the proper Party, to whom Justice is to be done.

But an Impeachment is not at the Suit, or in the Name of the *King*, but of *the Knights, Citizens and Burgesses of Parliament, and of all the Commons of England*; and therefore as the *King* cannot discontinue, or put a Stop to any Private Suit, nor pardon, or enter a *Noli Prosequi* upon an Appeal of a Private Subject, for the Killing of his Relation; so much less is such a Power reasonable upon an Impeachment of the *House of Commons*, for Invading the Rights of all the *Commons of England*.

But although the *King* cannot, yet the private Subject himself may delay his own Suit, as in the Case of a Tryal on Ejectment; and so may the *Commons* delay, or let fall, a Prosecution upon Impeachments; for *they are the Plaintiffs in this Suit, they are the Appellants*, they have a Power by the Constitution of the Government, to Impeach and Prosecute Publick Officers and Ministers of State, for any Mismanagement, to the Prejudice of the Publick; and will any Man say, that the *House of Commons* have not more Power over their own Suits, than any private Subject hath? Will any Man say, that the Concern of a private Subject is of more Weight than the Concern of a whole Nation? Or, can any rational Person affirm, that such a Power in the *Commons* is Unreasonable? No. We may as well argue, That it is an Unreasonable thing for the *Lords* to have a Right of Judicature, upon Honour, because it is possible they may be Partial in Justice, as for the *Commons* to have a Right of Impeaching and Prosecuting Offenders, at Discretion, because they may Delay the Prosecution.

'Tis true, That in the Case of a private Subject in an Inferior Court, both Law and Reason doth admit of a Supposition, that a Suit may be Commenced out of Malice



Malice and private Revenge, or an Erroneous Judgment may be obtain'd ; and, therefore a reasonable Time is limited for such Prosecutions, within which Time, if the Plaintiff doth not proceed, his Suit may be dismissed ; and a Method is appointed for Reversing such an Erroneous Judgment, upon a Writ of Error.

But neither Law nor Reason, nor the Constitution of any Government, doth admit of such a Supposition to be made against any Branch of the Supreme Legislative Authority ; for since the *Wise Men in the World, in the Original Institution of Government, cannot provide for all possible Cases that may happen, and on which the Happiness or Ruine of a Nation may depend.* It is absolutely necessary, that all the Branches of the Supreme Authority have a Liberty of Exercising the *Extraordinary Powers vested in them for the Common Safety*, in such a manner, as they in their Great Judgments and Discretions shall conceive to be *most Just and Reasonable*, and most Advantageous and Conducing to the Publick Good, and from which there lies no Appeal.

And therefore, since a Discretionary Power of Impeaching and Prosecuting great Ministers of State is necessary to be lodg'd in some one Branch of the Supreme Authority, no rational Person can justly argue against that Power in the *House of Commons*, unless he can shew any other Body of Men in *England* in whom that Power is Legally Vested, or can indeed be more safely Lodged than in the Representatives of the People.

And as to that, there are three Branches of the Supreme Authority, *the King, the Lords, and the Commons* ; but 'tis not proper to place a *Discretionary Power* in the King, of prosecuting Ministers for obeying his own Unlawful Commands, because it is possible to have a bad Prince, who may aim at Arbitrary Power, and rather Countenance than Punish his Ministers in such Cases.

Nor no Man can reasonably place a Discretionary Power of prosecuting Offenders upon Impeachments in the *Lords*, for then the *Lords* will be both Judges and Prosecutors, which is absurd ; and since the Publick Officers and Great Ministers of State are frequently Members of that Honourable House, it is happy for the *People of England*, and a great Honour to that Noble Assembly, that Justice can be had against them there, at the Suit of all the *Commons of England*.

Since then this Power of Impeaching and Prosecuting Evil Ministers, is necessary for the Publick Safety, and must be plac'd in some one Branch of the Supreme Authority ; and since no Branch thereof are accountable to any Superior Power, but may Exercise the Powers vested in them, as they in their great Judgments and Discretions shall think most conducing to the Publick Good : And since this Power cannot be lodg'd with the *King* nor with the *Lords*, for the Reasons aforesaid, it follows, that the same is Legally vested in the *Commons* ; and that they may exercise it as they think most convenient for the Publick Safety, without Control, or rendering any Account of their Proceedings ; and consequently, that they may (amongst other Things) *exhibit Articles of Impeachment when they think it convenient ; that is, in due Time, of which they, who are to draw them, must be the proper Judges.*

But

But to explain this Matter to the meanest Capacity, give me leave to suppose (*for a Wise Constitution of Government provides a Remedy for all Distempers and Accidents in the Body Politick*) that in any future Reign, a Great and Powerful Minister of State having the Command of many Millions of Money rais'd for the necessary Occasions of the *King* and Kingdom, but in great part employed for the Unnecessary Occasions of this powerful Minister and his Creatures, should thereby be enabled to create many Friends and Dependants in the Government, and also in the several Branches of the Supreme Authority; and at length, to Establish such a Scheme of Management of the Publick Affairs, that the Nation should not only be brought under a vast Debt, whilst the Managers got vast Estates, but should be Involv'd in such Unhappy Circumstances, and so reduc'd to the last Extremity, that the Representatives of the People should be entirely convinc'd that either that Publick Manager must be remov'd from the Publick Ministry, or the Nation be utterly Ruined and Undone.

What would you have the *House of Commons* do in such a Case? Would you have them sit still and see the Nation brought to Ruine and Desolation? Would you have them betray their Trust, and act contrary to their Judgments? No! The *House of Commons* in such a Case, ought to do what all Good Men would expect from them; and that is, to carry up a General Impeachment to the *Lords*, and appoint a Committee to draw up Articles upon that Impeachment, and in the mean time they would humbly Address the *King* for his own, and the Common Safety, to remove that Great Minister from his Councils and Presence.

And the Committee appointed to draw up the said Articles, would think themselves obliged for their own Reputation, and for the Honour of the *House of Commons*, and of all the *Commons of England* whom they represent, to take great care in discharging the trust reposed in them; and therefore as the Case may happen to be very short, so it may also happen to be very long, and according to the nature thereof, and the Circumstances of the Fact, so the Drawing of the Articles may take up a very short, or a very long time.

Sometimes there are a great number of Articles to be Exhibited, sometimes very few, sometimes many Witnesses are to be Examined, at other times none at all; sometimes they are obliged to send for Persons, Papers and Records; at other times they want no such assistance; sometimes the Witnesses are near at hand, sometimes at a great distance, sometimes the Committee agree to all the Articles at first sight, sometimes they differ in Opinion about every Article, and many days are spent in debating one Article, and perhaps in Debating one sentence in that Article, and the like may happen upon the Report to the House; where the same are read Paragraph by Paragraph, and frequently debated and altered before they are agreed to by the House. And infinite other Circumstances may happen, to make the Proceeding more quick or more slow; and therefore, *who can possibly be the proper Judges of the time of bringing in the Charge against the Person Impeached, but they who have all the Circumstances of the Case before them?*

'Tis true, that in inferior Courts, where Causes are carry'd on by private Persons, and not by numerous Bodies of Men, and where the Nature of the Business does admit of it, the Law hath appointed a set time to private Subjects, for bringing in all Declarations and Pleadings; and in case the Plaintiff or Defendant desires a longer time he must give a good reason for it: But this is so far from being an argument against the Privilege of the *House of Commons*, that it is a strong argument



for it : For it is evident by all the Precedents in the Journals of the House of Lords (of which many are lately published) *that no fix'd day was ever appointed for bringing in Articles of Impeachment*, but that sometimes they were exhibited the same day, sometimes in two days, sometimes in five, seven, twenty five, and twenty nine days, and at other times they have not been Exhibited till another Session, or an other Parliament, as the nature of the case has required ; and therefore there never being any set day fix'd for bringing in the Charge, *does evidently demonstrate that it was left at Liberty* ; and that neither the nature of the Case, nor the Nature of the Constitution of the Government did admit of any Limitation of time in such Cases, but that the same was entirely left to the Discretion of the House of Commons. And what great matter is this, that the House of Commons, who have a Power over the Rights and Liberties of all the people of *England*, as their Representatives, should also have a Power over the Liberty of a particular Subject ? Where is the danger ? What is the great Inconvenience ? it is plainly proved, That we must either Trust it there, or no where ; and if we Trust it no where, we must all be Ruined.

And if the *Commons* have usually brought in the Articles or Charge in a short time, that is no sort of Argument against them, but rather demonstrates that they have ever made good use of the Power lodged in them, and therefore ought not now to be divested of it.

But although the *Commons* have upon all occasions demonstrated their Zeal for Justice, and their Tenderness for all particular Persons, as far as was consistent with the Publick Safety ; Does it follow from thence, that when they Desire it, and conceive there is Occasion for it, that they must not have as much time to prosecute an Impeachment at the Suit of all the *Commons* of *England*, as a little Attorney has to prosecute an Action of 10 *l.* at the suit of a private Subject ? No certainly, this can never be admitted, when it is duly weigh'd and consider'd in a proper manner.

For if ever the *Parliament* should be inclin'd to limit a time for bringing in the Charge, and prosecuting an Impeachment to Tryal and Judgment, which must be done by a *Law*, as the Bill of Priviledges was, and not by any one branch of the Legislative Authority ; yet it cannot be conceiv'd, that any Member of either house would desire the time should be limited to so short a space as the very same Sessions of *Parliament* ; which though ever so long, may be so taken up with other publick Business, and the prosecution delayed by accidental Circumstances, that the greatest Offender may in such a case escape, for want of time to make good the Charge against him ; and so *the Liberty of all the people of England be lost for ever, for fear of losing the Liberty of a single person for a short time.*

And here it may also be observed, That the Trying of Impeachments hath always taken up a considerable part of a Session of Parliament, by reason of the Greatness of the Assembly, and of the Debates that frequently happen about the Priviledges of both Houses, as may be seen in all Proceedings of that kind, in the Journals of both Houses : And therefore, in times of danger, and at the latter end of a Session, when Foreign Affairs, and Matters of greater Consequence, require dispatch, it may not always be consistent with the Safety of the Nation, to proceed to such Tryals ; and *whether is of greater Consequence to the Publick, the Safety of the King or Kingdom, or the Tryal of an Impeachment, this Sessions or the next ?*

But when a Debate shall at any time arise between the Two Houses, that concerns the Right of all Impeachments whatsoever, and consequently the common Safety



Safety of the King and People ; there the *Commons* ought not to proceed to Tryal, till that matter be first determined ; notwithstanding they have plain and positive Proof against the Person Impeached, or that he had actually Confessed many of the Articles of Impeachment, which alone were sufficient to found a Judgment against him ; for otherwise it may so happen, *that the whole Justice of the Nation may be obstructed and defeated, by Proceedings of the like Nature.*

This was the Resolution of the Commons in the Case of the Five Popish Lords, whom no Person can think *they were unwilling to bring to a Tryal, or that they made use of such pretences only to cover an affected Delay in the Prosecution.*

There may perhaps be Instances given of a private Suit being Heard and Determined the same Term, but then it was by consent of all Parties ; or else no Court in *Westminster-Hall* can Compel either Party to come to Tryal and Judgment the first Term, by the strictest Rules of Proceeding ; and if a trifling Suit of small Value be Ended in Three Terms, it is reckoned a very quick Prosecution ; since few of them are determined in as many Years : And is it reasonable, that three or four Impeachments, at the Suit of all the *Commons of England* should be brought to Tryal and Judgment, without Consent, the very same Session of Parliament ?

And if the Lords have a Legal Power to appoint a time for bringing in the particular Charge before them, and in default thereof to dismiss the Impeachment ; may not the Lords then, if they please, make all Impeachments whatsoever useless and impracticable, and the People of *England* have no certain Remedy for Redress of Grievances.

But in case the *Lords* may also proceed to Tryal and Judgment, without the Concurrence of the *Commons*, then they may proceed either to Judgment of Condemnation, or to Judgment of Acquittal, and may not either of these Proceedings, at one time or other, prove very prejudicial both to the King and the People.

For give me leave once more to suppose, (what has or may happen) that there should be at any time hereafter a great Conspiracy to take away the Life of the King, and to subvert the Government, and Two Offenders are first Detected and Impeached ; and afterwards it should appear by farther Evidence, and by the Confession of the Impeached Persons, that divers other great Offenders more dangerous than themselves, are Engaged in the same wicked Design ; and that it was absolutely Necessary for the Common Safety, that the first Impeachment should not be prosecuted, in order to make those Persons Evidences against the rest : And suppose the said great Offenders to have many great Friends and Relations ; if then the House of Lords have a power to proceed to Tryal and Judgment, without the Consent and Concurrence of the Commons, may not the Lords, if they please, Condemn the Persons that were to be the Witnesses, and afterwards Acquit, for want of Evidence, all the rest of the dangerous Conspirators, whereby utter ruine and destruction may happen both to the King and Kingdom.

'Tis true it may with great reason, and without the least doubt be presumed, that the present *House of Lords* doth abhor the least thought of such an Action ; but we are not now Arguing what any House of *Lords* will do, but what they may do hereafter, if they think fit, and from thence to draw an Argument to prove the Constitution of the Government in this particular.

For such is the admirable Contrivance of the Constitution of the Government of *England*, to the Eternal Honour of those who first Establish'd the same, and  
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for the Perpetual Happiness of the *English* Nation, That no Care has been wanting effectually to provide for the Publick Safety, and therefore a *less Security was not Establish'd for the Safety of the People, when a greater might be had*: The People of *England* are not to depend upon the Security of *two* Checks or Branches of the Supreme Authority, when the Nature of the Thing will admit of *three*; nor of any *one*, when the Nature of the Case will admit of *two*.

Thus, in the Passing of Laws, the Nature of the Case doth admit of *Three* to be Checks one upon another, The *King, the Lords, and the Commons*, and therefore no Law can be Pass'd but by all three Branches of the Supreme Authority, who are United by Interest in the same Common End, *The Publick Good*. But in punishing Great Ministers of State, for doing Unlawful Things at the Command of the King, the Nature of the Case does not admit of all *Three*, for the Reasons aforesaid:—But it does admit of *Two*, The *Lords and Commons*; and therefore, it seems very agreeable to the Wisdom of our Forefathers, that neither of them should be omitted where the Security of Both might be had; and that since both Houses are United by Interest in the same Common End, they should also be United in the Means to attain that End; and that the Safety of the whole Nation should not depend on any *one*, but on the Concurrence of *both Houses*.

And thus it seems to be Wisely Establish'd, That as the *Commons* cannot Impeach but at the Bar of the *Lords*, so the *Lords* cannot regularly proceed to Trial or Judgment on that Impeachment, but upon the Prosecution of the *Commons*.

And as the *Lords* have a Right on one side to Appoint a Time and Place of Trial, so the *Commons* have a Right, on the other side, to such an Appointment as is Convenient for both Houses.

And here again, we may observe, The Policy and Excellency of this Constitution, which is so contrived, that it does in a manner Compel an Agreement between the Two Houses for the Publick Good; for if neither House can regularly proceed to Tryal and Judgment, without the Concurrence of the other, they must either Agree to settle all Preliminaries for the Conveniency of both Houses, or else both the Powers of *Lords and Commons*, relating to Impeachments, will be rendered Ineffectual.

So that it is not very material which House has the Power of Appointing Time and Place, since they must be Convenient, and Approved by both. Neither is it to any purpose, for either of them to Insist on any Time and Place of Trial when Both are not Ready, if neither can Regularly Proceed to the said Tryal without the Concurrence of the other.

And as there is great Conveniency and Security to the Subject on One Side, by the Necessity of the Concurrence of *both Houses*; so there is no manner of Inconveniency by it on the Other, but what is Incident to all Governments in the World; for if the Supreme Powers cannot agree, not only a Private Subject must Suffer for Want of being brought to Tryal, but the whole Kingdom must Suffer for Want of their Agreement.

And as to the Liberty of a Particular Subject Impeach'd, certainly his Life and Fortune is still more Safe in the Hands of Both Houses than in any One; and much more safe under the Necessity of their Concurrence, than if any One House had the Power of Proceeding alone; for as it is the Interest of an Innocent Person that Justice be not delay'd, so it is his Interest that Justice be not precipitated.



A Guilty Person may have Reason to dread the delay of a Session; because he may perhaps dread the Discovery of more Faults; but an Innocent Person being safe from the latter Fear, hath no Reason to be too much concern'd at the former, especially when his Person is under no Confinement.

But be the Case as it will, the most that can be made of it for the Liberty of the Subject is only this, That by One Construction the *Lords* may delay the Tryal of an Impeachment, and in the Other the *Commons*; that is, by One the Liberty of the Subject is in the Power of the *Lords*, by the Other of the Representatives of all the *Commons* of England.

But since the *Lords* are not Entrusted with both Powers, but only with the Right of Judging, and the *Commons* have the Right of Prosecuting Offenders, it seems Reasonable that the *Lords* may Judge, and the *Commons* Prosecute, as they in their great Judgments and Discretions shall think Just and Reasonable, for the *Publick Good*; and as no Argument against the Power of Judicature in the *Lords*, ought to be founded on a Supposition of Partiality in Justice, so no Argument against the Discretionary Power of Impeachments, in the *Commons*, ought to be founded on the Supposition of Delay in the Prosecution.

The *Lords* and *Commons* are both Branches of the Supreme Legislative Authority, and have these distinct Powers Lodged in them for the Common Safety of the *People of England*, and being *Mutual Checks* one upon another, and both under the Happy Influence of the *King*, who is the Father of his People, We ought not to find fault with our Constitution, but rather to admire the Care and Wisdom of our Ancestors, who have done all that was Possible, and the Nature of the Thing would admit, for the *Publick Safety*.

'Tis the Power of Impeachments has hitherto Preserved the Constitution of this Government, from the many Attempts of Evil Ministers; and 'tis to that we must always owe the Common Safety: And therefore the Possibility, Supposition, or Reality of a Hardship, to a Private Person, must not stand in Competition with the *Publick Safety*, nor with the Rights and Liberties of all the *People of England*. 'Tis better Suffer a private Michief, than a publick Inconvenience; and therefore 'tis better for the Nation, that a few Persons stand to the Mercy of the *Commons of England*, than that a Fundamental Part of the Constitution of the Government, which is Established for the Safety of All, be rendred precarious and ineffectual in their Favour.

'Tis for the Liberty of *England*, that every True *English-man* will Contend; and surely it is better, that the *Commons* have a Discretionary Power in the Prosecution of *Impeachments*, than any others have a Power of Defeating *Impeachments*, and thereby of Destroying the Rights and Liberties of all the *People of England*.

The *King*, *Lords* and *Commons*, have several Rights and Powers, as Necessary *Checks one upon another*, to preserve the *Common Safety*; but if any one hath a power to make the power of the other impracticable, then they cannot be *Checks one one upon another*, and consequently there is no *Common Safety*.

No sort of Government doth admit of an Absolute Perfection, and therefore that Government is the best, which carries with it great as great a Certainty and Security for the *King* and *People*, as the nature of Humane Government will admit; and since in all Constitutions of Government, there must be a Power lodged somewhere,



where, for the preservation of the Rights and Liberties of the People, and that Power in this Government is chiefly lodged in the Commons of *England* as their Representatives, we must not, in favour of a few, endeavour to destroy the Original Constitution for the Safety of all.

The Commons of *England* are Men, and may Err, yet 'tis They have hitherto preserved the Rights and Liberties of the People; and the Discretionary Power of Impeachments is so essentially necessary to the preservation of those Rights and Liberties, that whenever it is taken from them, the Safety of the People is gone with it.

What had become of this Nation in former Reigns, when Evil Ministers had almost Ruined the King and Kingdom, by Secret Intreigues and private Councils, if the Commons of *England* had not had a Power to censure them even upon *Common Fame*?

How often had *England* been Undone, if it had been necessary to make the Proofs publick before the Commons Impeached Evil Ministers, or made any Address to the King, to remove them from his Council and Presence?

Evil Council, like *Poyson*, is given in *Secret*; and tho' all Men are convinced of the Guilt by the Consequence and Effects, yet plain and positive Proof is not immediately to be attained: And if Evil Ministers are to be continued till such Proof can be regularly produced, upon Tryal of an Impeachment, the Nation, in that time, may be Ruined and Undone.

For this Reason, the Power of Impeachments was not Lodged in any but the Representatives of the *Commons of England*; nor the Right of Judicature, upon such Impeachments, in any but the *House of Lords*, who being Original Branches of the Supreme Legislative Authority, are presumed to be above any Private Ends or Designs, and therefore are not Confined to the strict Rules and Methods of Proceedings in Inferiour Courts.

And here it may be Observed, That no Subject of *England* ought to think himself in danger of any Injustice from the *House of Commons*, who are a Branch of the Legislative Authority, Representatives of all the People, Guardians of their Liberties, and Patriots of their Country, and where it is not to be imagin'd that a Majority of so numerous a Body of Gentlemen, can be Influenc'd against Reason and Justice; and the Person Impeach'd may also Petition both *Lords* and *Commons* to bring on his Trial.

And it may also be observed, That *whenever* either House has thought fit to put the other in mind of any Matter depending before them, it has always had a due Influence, for the Dispatch of Business, in a reasonable time, and has ever been done with that great Respect to each other, as is due from one Branch of the Legislative Authority to another, and as becomes the Wisdom and Conduct of both Houses, without the least Reflection on the Honour or Justice of either House, or without expecting any Answer thereto.

For this proceeding seems to be founded on a Supposition, that in the multitude of Business, a single Matter may be neglected, but that as soon as either House is put in Mind of it, they will immediately proceed, or else that they have Just Cause to the contrary; and therefore, after they have put one another in Mind, in general terms, the proceeding is still left to their own Discretion, without expecting any Answer, or *inserting any thing in the Message, that may seem to distrust the Honour and Sincerity of either House.*

But by what has been said, it may appear, That there is as much Care taken by the  
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Constitution of our Government, for the Liberty of particular Subjects, as is consistent with the Preservation of the Liberties of *England*; and more than that cannot reasonably be expected.

Hence also it may appear, That the *Lords* and *Commons* being Branches of the Supreme Legislative Authority, are not in the Exercise of the Great and High Power reposed in them, for the Common Safety, to follow the Laws and Customs of the Inferiour Courts of Justice, but the Laws and Customs of Parliament; for as the *Foundation and Reason of their Proceedings are different, so are their Laws.*

And therefore, as it would be very improper, to Cite a Case out of the Journals of Parliament, as an Authority in *Westminster-Hall*, so it would be altogether as improper to Cite a Precedent out of *Westminster-Hall* as an Authority in Parliament.

*Lex & Consuetudo Parliamenti*, The Law and Custom of Parliament is a distinct Law by it self. Thus my Lord Coke says, in his 4th Institutes, p. 15. *As every Court of Justice hath Laws and Customs for its directions, Some by the Common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs, &c. so the High Court of Parliament (suis propriis legibus & Consuetudinibus Substitit) has its own proper Laws and Customs*; for as the Reason differs, so also doth the Law.

And therefore there is as much Reason to alledge, That a Common Informer and Prosecutor ought to be treated as a Branch of the Legislative Authority; as to affirm, That a Branch of the Legislative Authority ought to be treated as a Common Informer or Prosecutor.

'Tis insisted, That what an Inferior Court can do, a Superior Court may do; but all the Inferior Courts may appoint Time and Place of Tryal, therefore the *House of Lords*, who are a Superior Court, may do so too. This is true if the Case be rightly Stated; but, *Qui bene distinguit bene docet*: Every Case stands upon its own Bottom, and One Material Circumstance quite alters the Nature of the Case. A Judge in *Westminster-Hall* may Appoint the Time of Tryal to a Common Informer, and also to the Attorney-General, tho' this is seldom or never done without a previous signification to the Court that he is ready with his Evidence: But be it as it will, the *Lords* may do as much to the same Prosecutors, if they came before them. But it does not hence follow that they can do the same to the Representatives of the *Commons of England*; unless they can shew that the Judges can appoint Time and Place of Tryal to the *House of Commons*, or that a Common Prosecutor, or the Attorney-General, is a Branch of the Legislative Authority, and has a Right of Impeachments vested in them as a Bulwark to Preserve the Rights and Liberties of the *Commons of England*: Then indeed that Case would be something like the Case of the *Commons*; but such a Supposition being absurd, no Argument can be drawn from thence against the Rights of the *Commons*.

The Attorney-General does indeed Prosecute in the Name of the *King*, and the *King* ought to have Justice as much as the *Commons*; but then it must be Considered that the *King* Sues in his own Courts in *Westminster-Hall*, and is as secure of Justice from the Judge, as he is from the Attorney-General; for the Judge is not only Bound to the *King* as his Sovereign, but in Conscience by his Oath of a Judge; and if Justice be refused, he may be removed from his Office, or a Writ of Error may be brought: But the *Lords* are under no such Oath or Obligation to the *Commons*, neither is there any Appeal from their *Lordships* Judgment. So that if the *Commons* may be Surprized in



in Time or Place, it must be Fatal to them without farther Remedy, and the Right of Impeachments for the Safety of *England* will be totally defeated. Therefore no Inference can rationally be drawn from this Proceeding in *Westminster-Hall*, to Govern the Case in Question.

My Lord Coke in his 4th *Institutes*, p. 23. Treating of Judicature hath these Words: *Now Order doth require to treat of other Matters of Judicature in the Lords House, and of Matters of Judicature in the House of Commons; and it is to be known that the Lords in their House have Power of Judicature, and the Commons in their House have Power of Judicature, but the handling thereof, according to the Worth and Weight of the Matter, would require a whole Treatise of it self.* And therefore refers to the Journals of the Lords, and the Book of the Clerk of the *House of Commons*, which he says is a *Record*, as is agreed by Mr. *Prynn*, to some Purposes, and as it is affirmed by Act of Parliament, *Anno 6 H. VIII. c. 16.* And here he cites the Case of *Thomas Long*, who gave the Mayor of *Westbury* Four Pounds to be Elected Burgefs, and thereupon was Elected: This Matter was Examined and Adjudged in the *House of Commons*, *Secundum Legem & Consuetudinem Parliamenti*, and the Mayor Fined and Imprisoned, and *Long* Removed; for this *Corrupt Dealing* (says Lord Coke) *was to Poison the very Fountain it self.* 8 Eliz. Vid. *Book of the House of Commons*, 8 Eliz. Ounsloe Speaker, fol. 19. 23 Eliz. *ibid.* fol. 14. *ibid.* *Munton* Struck *William Johnson*, a Member of Parliament: The *House of Commons* Adjudged *Munton* to the Tower, &c. See *Rot. Parl.* 8 H. VI. nu. 57. 2 Aprilis, 1 Mariae. These Cases are not oppos'd by my Lord Coke's great Adversary Mr. *Prynn*.

And by these few Authorities (of which many more might be cited out of the Old Books and Journals) it appears that the *Commons*, who have a *Right of Judicature in their own House*, and are a Branch of the Supreme Legislative Authority, are not, either in Point of Right, Reason, or Decency, to be treated like a Common Informer, or like an Attorney or Solicitor-General. The Nature of the Case speaks so Plain, and has been so Fully set forth before, that to offer much more upon that Subject seems to be altogether unnecessary.

All Men have a Right by the Law of Nature to defend themselves from Injury and Oppression, and 'till better Forms of Government were devised and appointed, Offenders against the Publick were usually condemned by the General Voice of the People.

The Power of Impeachments therefore in the Commons, seems to be an *Original Inherent Right in the People of England*, reserv'd to them in the first Institution of the Government by the Law of Nature, and Self-preservation, for the Common Security of their just Rights and Liberties.

And therefore they cannot be defeated of that Power without an Encroachment upon that Right which belongs to them by the Law of Nature, and Self-preservation, and thereby dissolving the Fundamental and Original Institution of the *English* Government: For an Impeachment (as the Commons were pleas'd to declare upon another occasion), is virtually the Voice of every particular Subject of this Kingdom, crying out against an Oppression, by which every Member of that Body is equally wounded. And it may prove a Matter of ill Consequence, that the Universality of the People, should at any time have occasion ministred and continued unto them, to be apprehensive of utmost Danger, from any Branch of the Legislative Authority, from whom they of Right expect Assistance.

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The *Judicature* of the Lords is indeed a wise and prudent Institution in the Established Government, to preserve a *Balance of Power*, and to be a *Screen and Back* between the King and the People; but that Power cannot reasonably be conceived to be lodg'd in the Lords as an *inherent Right by the Law of Nature*.

Whenever therefore a material Dispute shall arise, between two Branches of the Supreme Authority, whereof one hath an *inherent Right by the Law of Nature*, and the other a subsequent *Right by Institution*, concerning a Matter that is absolutely necessary to support both; which of them ought to give place? Or why is it not fair and equal for them to concur together, and assist each other, for the General Good of the King and Kingdom?

This seems very plain and evident, that the Concurrence of both Houses, to settle the Preliminaries before-mentioned, does not destroy the Right of Judicature in the Lords; but the contrary thereof, manifestly tends to make the Right of Impeachments in the Commons precarious, and ineffectual, at Will and Pleasure.

Whoever therefore argues for the Concurrence of both Houses to settle Preliminaries, does not argue against the essential Power and Right of Judicature in the Lords; but rather to preserve the same by preserving the just Balance of the Constitution; which is essentially necessary for the Safety of all.

But from hence it appears how Unjust it is to Censure any House of Commons for Committing Persons that are not Members, either for an Affront to the House, Contempt of their Orders, or for Corruption and Bribery in Elections, when the same has been done, not only in all the Parliaments, since this Revolution, whenever there was Cause for it, but this Power has been Exercised and Claimed as an undoubted Right in the Commons in all former Reigns: and indeed is as absolutely Necessary to Support that Part of the Constitution of the Government, as the same Power is in the Lords to Support the other.

For to what purpose have they a Power to send for Persons, Papers, and Records, for the Dispatch of Publick Business, if they have not Power to punish those that disobey their Orders? Or to what end have they a Power to give Money for the Service of the Nation, if they have not likewise Power to call those Persons to an Account, who defraud both the King and People, and apply the Publick Treasure to their own, or other corrupt Uses?

And here the same Maxim, which is cited before, comes in force again; That where a Power is granted to any Branch of the Legislative Authority, every thing is granted with it that is necessary to Support that Power, or else, in effect, no Power is granted at all.

And for that Reason neither the *Habeas Corpus Act*, nor any other Statute is ever extended to destroy the Privilege of either House of Parliament, without express Words in the Act; and in this Case a Person Committed cannot be Continued in Custody longer than that Session of Parliament, which is a small Punishment for an open Indignity to either House, or an Offence that tends to destroy the Constitution of Parliament.

Upon the whole Matter therefore it appears, that the way to preserve the Constitution of the *English Government* is to preserve the Right of Judicature to the Lords, and the Right of Impeachment to the Commons, from Interfering or Clashing One with the Other; and the best way to do that seems to be, for the Lords and Commons to agree and settle Preliminaries, and then the Lords to appoint Time and Place, and proceed to Tryal and Judgment at the Instance, and with the Concurrence of the Commons.

The Lords and Commons have continued for many Years in Peace and Union, Assisting and Supporting one another for the Common Good; and 'tis humbly  
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hoped that the same Methods by which that happy Union has hitherto been Preserv'd, will still be a means to perpetuate that Happiness to this Nation.

When any Misunderstanding therefore has at any time happened between the Two Houses, the Ancient and Constant Method of Proceeding in Parliament, hath ever been *to Appeal to Precedents*, and when the Precedents were doubtful, then to the Fountain and Foundation of all Precedents, and that is, *to Sound Reason*; and in order to that, Both Houses have agreed to Conferences or Committees, and thereby adjusted all Difficulties.

But here we must observe a Difference between *Facts* and *Precedents*. When either House hath actually pass'd a Vote, or done a thing which never came to be Considered by the other House, nor ever was Debated and Agreed to, at any Conference or otherwise betwixt the Two Houses, That is called a *Fact*, but cannot be insisted on as a *Precedent* to bind the other House. But when a Matter comes in Question betwixt the Two Houses, and is solemnly Debated and Considered, and afterwards Agreed to by Both Houses, that is esteem'd a *Precedent*, and ought (with great Submission) to be Binding and Conclusive to both Houses, and no *ancient Precedents* are usually cited against the *Latter*, in which all the former Precedents are supposed to have been considered. For,

Either the ancient Precedents are plain in the point, or they are doubtful; if they are plain, there is an end of the Debate; if they are doubtful, then *Reason is to be the Judge*, and the matter being determined by the Reason and Judgment of both Houses, that last determination of the case is an explanation of all the doubtful Precedents, and they ought never to rise up in Judgment against the same.

And such is the *Authority and Sovereignty of Reason* in all cases, but especially in Proceedings of Parliament, where the publick Safety is more immediately Concerned, That it not only *Explains*, but in some cases *Over-rules*, even the strongest Precedents, as in the case of a High Steward before-mentioned. It was never known upon any Impeachments and Tryals of Peers, but that the King did always Nominate and Appoint a High-Steward; the Precedents in the Journals of both Houses were full and express in the point; and yet when it came to be considered and solemnly debated, and argued from the Nature of the Constitution of the Government, Whether the Office of High Steward was necessary to the House of Lords in Tryals of Peers? it was carried in the Negative, *upon the very same reason in effect that the Argument for the Commons is now founded*; Because, if such an Office were Necessary, then the King might suspend or deny to Name a High Steward, and thereby a Power lodg'd in one of the Branches of the Legislative Authority, that is, *the Power of Judicature in Parliament upon Impeachments might be defeated*.

But if Reason upon a solemn Debate in the House of Lords, shall over-rule express Precedents to which both Houses had consented in all former Reigns, merely because upon farther Enquiry it did appear, that thereby it was possible (tho' not probable) for the King to defeat the Power entrusted with another Branch of the Legislative Authority, *as one of the supreme Checks* for the common Safety: How much more shall the same Reason over-rule any matters of Fact in either House that were never debated or brought to a final Determination by both Houses? *If this Argument be good for the Lords against the King, why not for the Commons against the Lords?*

But as to the appointing a Committee of both Houses to adjust Preliminaries, the Resolution in the Case of the Five Popish Lords seems to be a very express Precedent, for the direction of both Houses; for there *the Commons to avoid all Interruptions and Delays in the Proceedings against the Lords Impeached, and the Inconveniencies that may arise thereby, did propose at a Conference, that a Committee of both Houses might be nominated, to consider of the most proper ways and methods*

of



*of Proceedings upon Impeachments:* The Lords at first refused a free Conference, but afterwards they were pleased to Order, that there *shall be a free Conference with the House of Commons, upon the late Conference, concerning the forms and Methods of proceedings to be had at the Trial of the Lords.*

And the then Lord President having given the Lords an account of the said free Conference, with the several Debates *pro* and *con* on both sides.

Upon Consideration thereof it was Ordered, *That a Committee of the Lords be appointed to meet with a Committee of the Commons, to consider of Propositions and Circumstances in reference to the Tryal of the said Lords.*

Now what can be a more express *Precedent* than this? when after several *Conferences* and *Free Conferences*, the matter was at last so solemnly agreed to and settled; in which Proceedings it cannot be denied, but that all the former doubtful *Precedents* (which were not very numerous) were considered on both sides; and therefore ought never more to rise up in Judgment against a *Precedent* thus established. The like Committee was appointed by both Houses in the Case of the Earl of *Strafford*.

And as to the Methods of adjusting Preliminaries between the two Houses, there seems to be no difference (in reason) between *Impeachments for High Crimes and Misdemeanors, and Impeachments for High Treason*; For the Lords and Commons are equally concerned in both, and it is equally necessary for them to *preserve their Rights and Methods of Proceeding in one as well as in the other*; and since the Commons are allowed to Concur in the greater Case, why not in the lesser?

Whenever then the Commons shall desire a Committee of both Houses for settling the necessary Preliminaries on Impeachments, and amongst other things, *Whether several Lords accused of the same Crimes shall sit as Judges on each others Tryals for those Crimes*; they seem to be Justified both by the said *Precedent*, and by Reason; for it's a Fundamental Maxim of Reason and Justice in all Governments, that no Man shall sit as Judge in his own Case, and consequently shall not sit as Judge to pass Sentence, *That the very Fact of which he himself is Accused, is no Crime or Offence in Law*; for 'tis not said, That no Man shall be Judge on his own Tryal, to Acquit or Condemn himself, but no Man shall be Judge in his own Case: But if the Case of another, be the very same as his own, and upon the same Individual Fact, then his Judging in the Case of the other, is judging in the Case of himself.

And here it may be observed, That whenever a Debate hath happened concerning any Preliminary of this consequence, and which relates to the Method of Proceedings upon all Impeachments whatsoever, the *Commons* have always refus'd to proceed to Tryal till the Preliminaries were adjusted, least the same should be thereby Established as a *Precedent*, to the Subversion of Justice, on all future Impeachments.

*Since the way then to reconcile any Misunderstanding between the two Houses, is by Conferences and free Conferences, which are essential to the Proceedings of Parliament, and the only Means to preserve a good Understanding between the two Houses*; and wherein, upon a fair Debate, *Sound Reason is to be the Judge*, it follows that all *free Conferences* are to be Managed and carry'd on by the Members of both Houses, with all the *Decency and Respect* that is due from one Branch of the Legislative Power to another, and with that *prudence and moderation* that is requisite and necessary to promote a union and right understanding between the two Houses, for the common good of the King and Kingdom.

Whenever then any Managers of the Lords or Commons do transgress that Rule, they have always been Censured for it by their respective Houses, according to the circumstances of the Case, and the Nature of the Offence.

And it is to be observed, That in all free Conferences, the Managers do usually receive Instructions from the respective Houses for whom they are to Manage; and if any  
Manager



Manager exceed his Instructions, he is like a Soldier that goes out of his Rank, or a General that exceeds his Commission; he is to be blamed for it, tho' he has Success; But in case this Transgression is also attended with indecent and disrespectful Language to either House, and instead of promoting a Union (which is the End for which they meet) tends to widen the Difference; the same hath always been adjudged an Aggravation of the Offence, and to deserve a greater Punishment.

And in this Case it is not only to be consider'd, whether the Words spoken are true or not, for neither House has a Power to Try the other, *Guilty or not Guilty*? But whether the Words were *Indecent*, and did reflect on the *Honour* and *Justice* of either House: For in an Action of *Scandalum Magnatum*, the Party cannot justify the Words although they were true; much less any Words of Scandal against either House of Parliament.

When a Free Conference therefore is desired, in order to a Committee of both Houses, and a Committee is desired in order to a fair Tryal, and a fair Tryal in order to determine by the Judgment of all the *House of Peers*, whether the Persons Impeached are Innocent or not. No particular Manager of either House, has an Authority to determine that Point, or censure either House for their Proceedings. It is indeed possible, that Persons Impeached may be Innocent, tho' either *Lords* or *Commons* think them guilty, and a fair Tryal will bring that Matter to a fair Determination; but for a Manager of either House to exceed his Instructions, and to assert at a Free Conference, that the *Lords* or *Commons* themselves think those Persons Innocent whom the *Commons* have Impeached, or the *Lords* Condemned, seems to be not only a *High Indignity* to that Branch of the Legislative Authority, that is so treated, but a *great Abuse* of the Trust reposed in such Manager.

But that I may State the Case fairly, give me leave to suppose, that a Manager of the *House of Commons* should be so Indiscreet as to affirm at a Free Conference, that the *Lords* themselves thought that Person Innocent that they had Condemned; and that thereupon, the *Lords* should send to the *Commons*, to demand Reparation for that Indignity offer'd to the *House of Peers*. There is no doubt, but the *House of Commons* have a Right of Judicature within their own House, and especially upon their own Members; what would then be reasonable and proper for the *House of Commons* to do in that Case? They might, indeed, admit the Manager to put in an Answer, in his own Defence, by either Denying or Excusing the Matter Charg'd against him; but can it be imagin'd, that they would admit the said Manager to Justify such a Charge against him, and to Multiply Affronts to the *House of Peers*, by giving Reasons to prove, That the *Lords* were Guilty of so Ill an Action, and that they had not only Condemned the Innocent, but had done it wilfully, and were Conscious of their own Evil Action? Can it be conceived, that they would suffer such a Justification to be put in Writing, and sent up to the *House of Lords*; alledging, that the *Lords* did think those Persons Innocent whom they had Condemned, because others that were in his Opinion Guilty of the same Crimes, were not condemned also? To what End should such an Answer and Justification be sent to the *Lords*? To reply and join Issue upon it? How should that Matter be Try'd? How were it possible to know what were the *Lords* Thoughts, or the Reasons why the *Lords* did not think others equally Guilty, or had not yet thought fit to Condemn them? Shall the *Commons* pretend to Try the *House of Peers*, *Guilty or not Guilty*? (and in this Case, no other can have a Right of Judging, where their own Member is concerned, but themselves;) or can either House Try the other? No, certainly, the Sole Question upon this Message to the *Commons* would be, What were the Words that were spoken? And then, whether they were decent and proper to be said at a Free Conference between the Two Houses, and pertinent to the Matter in Debate, and within the Instructions of the House: And if they were, the *House of Commons* would endeavour to Excuse their Member to the *Lords*; but if that would not be accepted, they would rather command a private Member to assure their Lordships, That he did not design to Reflect on, or Dishonour the

House

House of Peers, but if he had unfortunately spoke any words, that were in the least Offensive, he humbly begg'd their Lordships Pardon, than suffer any Misunderstanding between the Two Houses on that account, to the Prejudice of the Publick Affairs of the King and Kingdom; and no Subject of England is too Big, to make such a Submission to any Branch of the Supreme Authority.

But if upon Consideration of the Words they appeared to be Indecent, and not proper to be said at a Free Conference, and that they were not within the Instructions of the House. The Commons would immediately pass such a Censure and Punishment upon that Manager, as the Nature of the Offence did require; and 'tis to be hoped, the Lords will always observe the same Respect to the Representatives of all the Commons of England.

And here it may be observed, that when several Persons are concerned in the same Fact, it does not therefore follow, that they are equally Guilty; or if they were, that because one is Prosecuted and the other not, that therefore all are thought Innocent. Sometimes it's thought convenient to shew Mercy in the midst of Justice, and to prosecute a few of the Chief, and Excuse the Followers and Dependents, *Ut pœna ad paucos, Metus ad omnes perveniat*. Sometimes it is proper to save one in order to obtain Evidence against another, and sometimes a Circumstance alters the Nature of the Crime, as in the Case of killing a Man; that which is only Man-slaughter or Chance-medley in one, by the Addition of *Malice prepense*, is Murder in another. And many other Differences may happen to distinguish one Case from another; therefore,

No private Person is a proper Judge in Cases of this Nature, nor ought, upon a Free Conference, to make any Reflecting Inferences upon the Honour or Justice of either Lords or Commons, from his own private Apprehensions.

The Commons have a Discretionary Power in all Cases of this Nature, and may think fit to begin with One Person, who appears to them to be most Criminal, and may respite the Impeachment of another till they see the Event of that proceeding. Or they may think fit to Impeach one Person for a Multitude of Crimes, and not to Impeach another for a single Crime; for they are the proper Persons to Judge, from the various Circumstances of every Case, what is prudent and fit to be done, in Cases of Impeachments, for the Common Safety of the King and the People; and no Manager at a Conference has any Authority to Censure, or Reflect on the Justice of their Proceedings.

And thus, upon the whole Matter, the Nature and Excellency of the Government of England, by King, Lords and Commons, may appear to all, and even to the meanest Capacity. Here we may observe, the Wise Provision made by our Ancestors, for the Common Safety of the King and the People, That as no Blame may be Imputed to the King, so no Wrong be done to the People.

Under this Happy Constitution of Government, Secured by a Wise distribution of Power, in the Original Frame and Institution thereof, to all the Three Supreme Branches of the Legislative Authority, as Mutual Securities for the Common Safety, and to Assist each against the Encroachments of the other, this Nation has enjoy'd Peace, Prosperity and Happiness, for many Generations: And it will be difficult to find an Instance, in any Age, that ever any Troubles, or Civil War, happened in England, but when some one Branch of the Supreme Authority did unreasonably Encroach upon the Rights of the other.

The Way then to preserve England, is to preserve the Just Ballance of the Constitution; and when any Mistake or Misapprehension happens between any of the



Branches of the Supreme Authority, to *preserve those Methods that are essential to the proceedings of Parliament*, and the only Means to preserve a good Understanding; and that is, *By humble Petitions or Addresses to the King, and by Conferences, free Conferences and Committees betwixt the Two Houses.*

By these Means, this Nation hath hitherto Prosper'd, and the People Enjoy'd their Rights and Liberties, to the Wonder or Envy of all the World; and therefore, we must be careful of admitting any Innovations, or New Doctrines, spread Abroad by Ignorant or Seditious Persons, to render this Happy Constitution void, and of no effect.

The Three Branches of the Supreme Authority, are all entirely concerned in Interest to promote the Publick Good, and have an Absolute Supreme Power of making such Laws, and doing such Things, as they in their Great Wisdoms and Discretions shall conceive to be most Advantageous and Conducive to the Welfare of the Nation: And the particular Powers lodg'd in every one of them, as Mutual Securities for the Common Safety, are not to be limited by any other Authority besides their own; Neither can they be Accountable to any other Power on Earth, without confounding the Government, and dissolving the Constitution.

For since one Person cannot dispose of the Right of another, unless he has Authority from the other so to do; and since it was not possible to have a General Meeting of the *Body of the People of England*, to Consult together for the Interest of the Nation, and to Determine, by Majority of Voices, what was most Prudent and Safe to be done for the good of the Whole, (which is always to be preferred before the good of any particular Part) it follows that it was Absolutely Necessary to Chuse Representatives from all Parts of the Kingdom, to whom the Interest and Grievances of every Place and County might be fairly Represented and *Debated together at one and the same time*; and who, (in Concurrence with the *King and the Lords*) after many Serious and Solemn Debates, are best able to Judge, and most proper to Determine, by Majority of Voices, what is most Advantageous and Conducive to the General Good of the *King and Kingdom.*

It can never therefore be admitted as Legal, or so much as consistent with the Interest and Safety of *England*, for the Freeholders of any particular Place or County, to *Direct the proceedings of Parliament*, since the Safety of the People entirely depends upon the *Result of the Mutual Debates and Consultations* of their Representatives, that come from all Parts and Corners of the Kingdom; and who alone are able, *by the Assistance of one another, to Understand the true State and Condition of the Nation.*

'Tis true, that such is the great care and tenderness had for the Safety of the People, that they may, in a decent and respectful manner, Petition the *King, Lords or Commons*, for Relief or Redress of *any Real Grievance*; but when ill-disposed Persons abus'd the Goodness of their Governours, and, under pretence of publick Grievances, took upon them to Direct the King or the Parliament, in Matters of the highest Importance relating to the Welfare of the whole Kingdom, whereby many Disorders and Calamities did arise to this Nation, then at last a Statute was made, in the 13th of King *Charles II. Chap. 5.* Entitled,

'An Act against Tumults and Disorders, on pretence of Preparing or Presenting 'Publick Petitions, or other Addresses, to His Majesty, or the Parliament.

**W**Hereas it hath been found by sad Experience, That tumultuous and other disorderly soliciting, and procuring of bands by private Persons to Petitions, Complaints, Remonstrances and Declarations, and other Addresses to the King, or to both, or either Houses of Parliament, for alteration of Matters established by Law, redress of pretended Grievances in Church or State, or other publick Concernments, have been made use of, to serve the ends of Factions and Seditious Persons gotten into Power, to the violation of the publick Peace, and have been a great means of the late unhappy Wars, Confusions and Calamities in this Nation.

This

This is the Recital of that Statute, by which some Persons, do Claim a Right to Petition the King and Parliament in any Case whatsoever; but hereby it appears, what has been the Effect of disorderly Petitions in former Times; and that such Proceedings (even where Lawful) ought not to be had without extraordinary occasion for it; for what has served the Ends of Factious and Seditious Persons in former Times, may do so in this.

For preventing the like Mischiefs for the future, Be it enacted by the Kings most excellent Majesty, by and with the consent of the Lords and Commons assembled in Parliament, and by the Authority of the same, That no person or persons whatsoever, shall from and after the first of August, One thousand six hundred sixty and one, Sollicite, Labour or Procure the getting of Hands, or other consent of any persons above the number of twenty or more, to any Petition, Complaint, Remonstrance, Declaration, or other Address to the King, or both, or either Houses of Parliament, for alteration of matters established by Law in Church or State, unless the matter thereof have been first consented unto, and ordered by three or more Justices of the County, or by the major part of the Grand Jury of the County or Division of the County where the same matter shall arise, at their publick Assizes, or General Quarter Sessions, or if arising in London by the Lord Mayor, Aldermen and Commons in Common Council assembled; And that no person or persons whatsoever shall repair to His Majesty, or both or either of the Houses of Parliament, upon pretence of presenting, or delivering any Petition, Complaint, Remonstrance or Declaration, or other Addresses, accompanied with excessive number of People, not at any one time with above the number of ten persons, upon pain of incurring a penalty not exceeding the Sum of One hundred pounds in Money, and three months Imprisonment without Bail or Mainprize for every offence, which offence to be prosecuted at the Court of Kings-Bench, or at the Assizes, or General Quarter Sessions, within six months after the offence committed, and proved by two or more credible Witnesses.

Provided always, That this Act, or any thing therein contained, shall not be construed to extend to debar or hinder any person or persons, not exceeding the number of ten aforesaid, to present any publick or private grievance or complaint, to any Member or Members of Parliament after his Election, and during the continuance of the Parliament, or to the Kings Majesty, for any remedy to be thereupon had; nor to extend to any Address whatsoever to His Majesty, by all or any of the Members of both or either Houses of Parliament, during the sitting of Parliament, but that they may enjoy their freedom of access to His Majesty, as heretofore hath been used.

By this Statute it may be observed, That not only the Number of Persons is restrained, but the Occasion also for which they may Petition; which is, for the Alteration of Matters established in Church or State, for want whereof some Inconvenience doth arise to that County from which the Petition shall be brought. For it is plain, by the expresse words and meaning of that Statute, That the Grievance, or Matter of the Petition, must arise in the same County as the Petition it self: They may, indeed, Petition the King for a Parliament to Redress their Grievances; and they may Petition that Parliament to make one Law that is Advantageous, and Repeal another that is Prejudicial to the Trade or Interest of that County, but they have no Power by this Statute, nor by the Constitution of the English Government, to direct the Parliament in the General Proceedings concerning the whole Kingdom; for the Law declares, That a General Consultation of all the wise Representatives of Parliament, is more for the Safety of England, then the hasty Advice of a number of Petitioners of a private County, of a Grand Jury, or of a few Justices of the Peace, who seldom have a true State of the Case represented to them.

But it is wisely provided by this Statute, That in all Cases where it is Lawful and Reasonable for a Number of Persons to Petition for making or repealing a Law, that even in that case, it should be done in a peaceable manner, and by the consent and order of Three or more Justices, or by the Majority of the Grand Jury; because they are generally Persons of some Note, and are answerable to the Government for all illegal Petitions that they consent to; for altho' the Form of proceeding, by Order of Three or more Justices, may in great measure excuse the Petitioners for such illegal Acts, as not doing the same in a Tumultuous manner, yet it will not justify the Justices or Grand Jury, who ought to understand the Law, (tho' not Matters of State) and be well Advised before they Consent to Petitions of that Nature and Consequence.

But



But admitting a Petition to be made upon a Lawful occasion, to Redress a Real Grievance *arising* in that County, and to be made pursuant to the said Statute; yet no Subject can pretend to a Right, under the pretence of a *Petition*, to reflect on the Honour and Justice of the Parliament, or to *Condemn* and *Expose* their *Proceedings*.

The Subject has an Undoubted Right to Commence a Suit in *Westminster-Hall*, to Exhibit a Bill in *Chancery*, or to Petition the Lord *Chancellor*; but yet he has no Right to affront any of the said Courts; and if he should presume in such a Petition, to desire the *Lord Chancellor* to *turn his plausible Speeches into Just and Righteous Decrees*, I presume his Lordship might legally Commit him to the *Fleet* for such an Indignity to the Court.

For as we must take care to preserve the Rights of particular Subjects, so much more to preserve a due Respect to all Courts of Justice, and especially to preserve the Dignity of Parliaments, and the Rights of the Representatives of all the *Commons of England*; for whoever Affronts the Representatives of the People of *England*, Affronts the People themselves; and as much as in them lies, over-turns the Constitution of the Government, appointed for the *Common Safety* of both King and People.

And here it may not be improper to observe, That it seems very Prudent and Requisite, that all the several Branches of the Supreme Authority should at all Times, and upon all Occasions, Support and Assist each other, and not in the least Countenance any sort of Proceeding, that in any Measure, or by any Indirect Means or Insinuations whatsoever, tends to the Dishonour or Reproach of any one of them, least that Method that is taken at one time to Dissolve a *Parliament*, should be taken at another, to deprive this Nation of the Happiness of the *House of Peers*, or even of *Kingly Government*.

But as to the *Nature* of the Powers and Proceedings of the Lords and Commons upon Impeachments, The Writer, notwithstanding any thing herein alledg'd, doth not pretend to *Affert*, but *Argue*; not to *Determine*, but to *Submit to better Judgment*. He is (indeed) desirous either to convince, or be convinced; and therefore hath freely delivered his Opinion in such Terms, as the Nature of the Matter seemed to him to require, in hopes that if his Arguments have any Weight in them, they may Influence one side; and if none, that the Answer to them may Influence the other, in order to a right Understanding, and a Happy Union betwixt all.

'Tis no Dishonour to a Just Judge to change his Opinion, and a multitude of Publick Business may justly Excuse all Persons from a hasty Resolution: And since it is the Interest of all to live in Peace and Union, it is the Interest of all to hear what can be fairly offer'd for that purpose.

As to the Three Branches of the Supreme Authority, he takes it for a Maxim, that no Blame or Wrong is to be imputed to them, or any of them; But if any Mistake happen, they will be pleased to hear the Matter fairly debated, on all sides, in order to create a Right Understanding, which must be the Desire of all, since they are all United by Interest in the same Common End, *the Publick Good*.

And as to any private Persons that either have, or shall hereafter offend against our happy Constitution of Government, the Writer can come up to any thing in favour of their Persons, tho' not of their Errors: 'Tis the *Publick Good* he aims at, and the *Preservation of that Constitution*, that is so valuable to this Nation; and which he should think himself and his Posterity unworthy to enjoy, if he should basely give up or betray the same, for any private Respects or Friendships on one side, or for any mean or servile fear on the other.

**F I N I S.**